Supreme Court, U.S.
FILED

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No. ___

IN THE

Supreme Court of the United States

MARY L. IRONS,

Petitioner,

v.

ASOCIACIÓN DE PROPIETARIOS DE LA URBANIZACIÓN DORADO REEF, INC.,

Respondent.

Petition for a Writ of Certiorari to the District of Columbia Court of Appeals

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PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Are the District of Columbia Courts required to preserve and maintain the integrity of the judicial system by full and reasoned adjudication on the merits based on all of the record evidence of a claim that judgment was unethically procured by counsel?[1]

2. Whether the Court of Appeals, by affirming the grant of a corporate defendant's falsely verified pro se motion ghost-written by counsel to dismiss for lack of personal jurisdiction, so far departed from the accepted and usual course of judicial proceedings and sanctioned such a departure by the trial court as to call for the exercise of this Court's supervisory powers?

3. Whether an unrepresented non-lawyer corporate president who signs and concurrently verifies and files a knowingly false motion to dismiss for lack of personal jurisdiction is liable for sanctions under Rule 11(c) of the Rules of the District of Columbia Superior Court, wherein said rule is identical to Rule 11(c) of the Federal Rules of Civil Procedure?

4. Whether Rules 11(b)(1) and (2) are violated by the filing, in violation of Superior Court Rules 101(a)(1) and (2), of a motion to dismiss for lack of personal jurisdiction on behalf of a corporation wrongfully appearing pro se signed by the defendant corporation's president who is not a lawyer?

5. Whether prima facie personal jurisdiction of the forum court over a non-resident corporate defendant is established by facts that the suit is based on a contract between plaintiff, a forum resident, and the non-resident corporate defendant, who was proactive to procure an amendment to the contract;

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[1] This Question 1 is substantially the same as Question 4 on Petition No. 02-26 filed July 3, 2002 which refers specifically to the "Federal Courts". In these cases, the respondent is the same and the same counsel for respondent is implicated.

wherefore, due process precludes the grant, without any evidentiary hearing, of the non-resident defendant corporation's motion to dismiss for lack of personal jurisdiction?

PARTIES

Petitioner, Mary L. Irons, is an individual.

Respondent, Asociacion de Propietarios de la Urbanizacion Dorado Reef, Inc. (APUDRI), is a corporation of the Commonwealth of Puerto Rico. The APUDRI corporation's sole function is to administer the business affairs of Dorado Reef, a Puerto Rico housing development. Prior to October 2001, petitioner and her husband, Edward S. Irons (petitioner in No. 02-26), owned a housing unit in the Dorado Reef housing development. Neither petitioner nor her husband is now or has ever been a member of the respondent Asociacion.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Mary L. Irons, respectfully petitions that a writ of certiorari be granted to review the judgment of the District of Columbia Court of Appeals.

OPINIONS BELOW

The opinion of the District of Columbia Court of appeals was filed April 10, 2002 (1a-7a).

The opinion of the Superior Court of the District of Columbia was filed September 22, 2000 (14a-27a).

JURISDICTION

The judgment of the District of Columbia Court of Appeals was entered on April 10, 2002 (1a-7a). A timely Petition for Rehearing was denied on May 30, 2002 (8a). This petition was timely filed on August 28, 2002.

This Court has jurisdiction under 28 U.S.C. §1254(1).

The jurisdiction of the Superior Court of the District of Columbia was invoked under District of Columbia Code, Title 11, § 921, as amended.

CONSTITUTIONAL PROVISION INVOLVED

This case involves the due process clause of the Fifth Amendment to the United States Constitution which provides that "[n]o person shall . . . be deprived of life, liberty or property without due process of law".

STATUTES INVOLVED

D.C. Code §13-423

(a) A District of Columbia Court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a claim for relief arising from the person's—

(1) transacting any business in the District of Columbia; [2]

* * * *

(4) causing tortious injury in the District of Columbia by an act or omission outside the District of Columbia if he regularly does or solicits business, engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed, or services rendered, in the District of Columbia.

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[2] "D.C. Code, Title 13, section 423(a)(1) permits the exercise of personal jurisdiction to the full extent permitted by Due Process" (19a). Citations omitted.

* * * *

(b) when jurisdiction over a person is based solely upon this section, only a claim for relief arising from acts enumerated in this section may be asserted against him.

D.C. Superior Court Civil Rule 101

(a) *Who may practice.* (1) An attorney who is a member in good standing of the District of Columbia Bar may enter an appearance, file pleadings and practice in this Court.

(2) No person other than one authorized by this Rule shall be permitted to appear in this Court in a representative capacity for any purpose other than securing a continuance. No corporation shall appear in the Division except through a person authorized by this Rule. . . .

STATEMENT OF THE CASE

In the 1998-1999 time period, respondent Asociacion de Propietarios de la Urbanizacion Dorado Reef, Inc. ("APUDRI") made a claim for maintenance fees premised on petitioner's co-ownership of a housing unit in the Dorado Reef Puerto Rico housing development. APUDRI's president assured petitioner that such claim would not be pressed. Thereafter, APUDRI cited an opinion of its counsel to repudiate its president's assurance and advised that suit for collection of alleged maintenance fees would be filed in a Puerto Rico State Court if the fees were not promptly paid.

The original complaint in this action was filed on January 4, 1999 (65a-66a; ¶¶ 1-4 only). It sought, among other things, a declaratory judgment that petitioner did not owe any maintenance fees to APUDRI.

This petition is from the judgment of the District of Columbia Court of Appeals which affirmed the trial court's

(District of Columbia Superior Court) order and judgment (14a-27a) granting APUDRI's Motion to Dismiss for Lack of [Personal] Jurisdiction (61a-64a). According to the trial court: "The exercise [of] personal jurisdiction over this defendant would violate defendant's right to Due Process and run afoul of the Fifth Amendment" (27a). At the time the Motion to Dismiss was granted on September 22, 2000, the case was pending on the Second Amended Complaint, filed as authorized by a December 14, 1999 trial court order (28a-31a). The Second Amended Complaint alleges, *inter alia*:

> I. NATURE OF THE CASE
>
> 1. This is an action for declaratory and injunctive relief and damages for tortious interference, breach of contract and negligence. Defendant homeowners association has subjected plaintiff, a Washington, D.C. resident and owner of a second home in Puerto Rico, to a long-running series of meritless claims for association maintenance fees and assessments on the second home. Declaratory relief is sought establishing that there is no such liability. In addition, although defendant is well aware of the personal nature of its maintenance fee claims, defendant has directly, intentionally, wrongfully and maliciously interfered with plaintiff's efforts to market and sell her property by advising plaintiff's realtor to tell prospective purchasers that the plaintiff's asserted liability to defendant would become the obligation of any purchaser, when an agreement binding on defendant provides exactly the opposite. Plaintiff's ability to sell her property has been significantly impaired by this wrongful and intentional conduct and breach of contract by defendant, warranting appropriate relief. Finally, plaintiff seeks damages for defendant's negligence in providing security to her property. [pages 1-2]

* * * *

IV. FACTS COMMON TO ALL COUNTS

* * * *

14. . . . [P]laintiff entered into an agreement with Dorado Reef, S.E., setting forth plaintiff's qualified agreement to imposition of the Restrictive Covenants on the Property ("1993 Agreement"). [page 4]

* * * *

25. The 1993 Agreement was amended by a writing signed by Sanchez on behalf of Dorado [Reef], S.E. in Puerto Rico on November 10, 1997 and signed by plaintiff and Edward Irons, her husband, in Washington, D.C. on November 26, 1997 . . . . [page 7]

TRIAL COURT PROCEEDINGS

On or about February 2, 1999, after the original complaint was filed in the District of Columbia Superior Court on January 4, 1999 (65a-66a), APUDRI served and filed by United States mail a verified pleading stating:

MOTION TO DISMISS FOR LACK OF [PERSONAL] JURISIDICTION

* * * *

COMES NOW, Defendant party *pro se* . . . . [61a]

The defendant *corporation's pro se* Motion to Dismiss was signed and verified by Diego Chevere, *not* a lawyer, in his capacity as "President of Dorado Reef Homeowners Association" (64a). The trial court's December 14, 1999 Order (28a-31a) ruled that:

- "the Second Amended Complaint is deemed filed" (29a);

- "Defendant's Motion for Leave of Court to Resubmit [*the original*] Motion to Dismiss for Lack of Jurisdiction, filed July 8, 1999, is GRANTED" (30a); [3]
- each party "shall have until January 31, 2000 in which to complete all discovery on jurisdiction" (30a);
- "Defendant shall have until February 18, 2000 in which to supplement its Motion to Dismiss" (30a); [4] and
- "Plaintiff shall have until March 10, 2000 in which to respond [to the supplement]" (30a).

Pursuant to the December 14, 1999 Order (28a), petitioner filed interrogatories and a request for documents upon respondent. These discovery requests were blocked and evaded by respondent's counsel. No "new" documents were produced. Petitioner did, however, obtain deposition testimony prior to January 31, 2000 of

(1) Diego Chevere, who verified the Motion to Dismiss;

(2) Jose De La Cruz Skerrett, defendant's counsel, who was the ghostwriter of the Motion to Dismiss for Chevere's verification and signature; and

---

[3] The July 8, 1999 "Motion to Resubmit" (59a-60a) states: "Defendant respectfully requests leave from the Court to resubmit its *original* Motion to Dismiss for Lack of Jurisdiction" (60a; emphasis added). It is crucial to understand that only the "*original*" Motion to Dismiss was *resubmitted without change*. As such, *none* of the flaws in the ghostwritten, falsely verified original Motion to Dismiss (other than the *pro se* filing) were "cured" (12a, n. 2) by its resubmission as the trial court and the Court of Appeals later held.

[4] No such "supplement" was filed.

(3) The notary Martinez Rodriguez, who administered the oath to Chevere to verify the Motion to Dismiss.

On March 10, 2000, pursuant to the December 14, 1999 Order (28a), petitioner filed:

(a) Plaintiff's Personal Jurisdiction Brief;

(b) Plaintiff's Motion for Sanctions (41a-52a) and

(c) Plaintiff's Motion to Strike "Motion to Dismiss for Lack of Jurisdiction" (53a-57a).

The petitioner's Personal Jurisdiction Brief explains that the 1993 agreement which the trial court's dismissal order says "can form the crux of plaintiff's action" (25a) resulted from negotiations *initiated by APUDRI* in June 1993, including a meeting by APUDRI's Chief Executive Officer with Irons in Washington, D.C. and finally culminating in an agreement executed in Puerto Rico on December 7, 1993. It is undisputed as stated in the Personal Jurisdiction Brief:

> [B]efore the December 7, 1993 Agreement was executed, a plurality of telephone discussions relating to "restrictive covenants" occurred for months between Sanchez [then APUDRI CEO] in Puerto Rico and Irons in Washington, D.C. Sanchez, who then owned an apartment in Washington, D.C., also conferred personally with Irons in Washington, D.C. on at least one occasion during the June 1993 to December 1993 time period. [pp. 21-22; see 35a]

The petitioner's Motion for Sanctions (41a), also filed March 10, 2000, relies on deposition testimony which demonstrates that Chevere, who verified the Motion to Dismiss; Skerrett, who was its ghostwriter; and the notary Martinez Rodriguez, who administered the oath verified to Chevere, *all knew at the time that the verified Motion to Dismiss contained averments that were simply not true.*

The Motion to Dismiss was ghostwritten in Chevere's absence by APUDRI's legal advisor Skerrett who testified:

> Q Was that document [Motion to Dismiss] prepared in your office?
> A Yes, it was.
> Q By whom?
> A By me. (Skerrett 1/20/00 Tr. 7, l. 14 to Tr. 8, l. 2)

The Motion for Sanctions (41a) emphasizes that Skerrett had a duty to inquire before filing the Motion to Dismiss *per se*. Skerrett knew when he drafted the APUDRI corporation's *pro se* Motion to Dismiss that Puerto Rico law bars *pro se* appearances by corporations. Mr. Skerrett testified:

> Q. Mr. De La Cruz, are corporations permitted to appear pro se in Puerto Rico?
>
> * * * *
>
> THE DEPONENT: No, they're not. [Tr. 37; 44a]

Skerrett included as the last page of the Motion to Dismiss, which he drafted for execution by Mr. Chevere, a "Sworn Statement" verified by Affidavit No. 334 of Notary Martinez Rodriguez which states:

SWORN STATEMENT

I, Diego Chevere, being duly sworn, declare that the statements included in this document are true in every respect.

/s/_____
DIEGO CHEVERE

Affidavit No. 334

Sworn and subscribed before me by Mr. Diego Chevere, of legal age, married, President of Dorado Reef

Homeowners Association, and resident of Dorado, Puerto Rico, whom I identify by his license number 522889 issued by the Commonwealth of Puerto Rico.

In San Juan, Puerto Rico, this 2nd day of February, 1999.

/s/_____
MARTHA LISSETTE
MARTINEZ RODRIGUEZ
Notary Public

(64a)

On January 21, 2000, Chevere testified regarding his February 2, 1999 verification of the Motion to Dismiss as follows:

> Q All right. I want you to look at Exhibit Three again and in particular the Motion to Dismiss for Lack of Jurisdiction there is a part that says, "Affidavit Number Three Three Four".
> Do you see that?
> A Yes.
> Q What oath was administered to you at the time you verified this document?
> A That oath is comments and points that are detailed in this document are true and correct.
> Q Did you—*did the oath which you swore to specify that you were telling the truth, the whole truth and nothing but the truth*?
> A *Yes*. (Tr. 7; emphasis added; 48a).

In fact on that same day, February 2, 1999, Chevere came to the Skerrett Law Office in San Juan, Puerto Rico. He met there with Skerrett's associate, attorney and Puerto Rico notary, Martha Lissette Martinez Rodriguez (hereinafter "notary Rodriguez").

When Chevere arrived on February 2, 1999, notary Rodriguez caused the Motion to Dismiss to be printed by a computer located in the Skerrett Law Office. After it was printed, notary Rodriguez gave the Motion to Dismiss to Chevere; whereupon, Chevere signed it, including the "Sworn Statement" before Rodriguez, who verified it over her own signature as notary by her Affidavit No. 334 and applied her notarial seal.

Chevere testified on January 18, 2000:

> Q Is it your practice to read documents or at least legal documents carefully before you sign them?
> A Yes. (Chevere Dep. 8, ll. 21-23; 48a).

The integrity of the verified Motion to Dismiss is impugned because it includes averments which conflict not only with later deposition testimony of Chevere, who *verified* the Motion, but also with the deposition testimony of Skerrett, who *prepared* it for verification by Chevere.

Verified averment paragraph 1 on page 1 of the Motion to Dismiss states:

> 1. On January 4, 1999, Plaintiff's husband, Edward S. Irons, filed a complaint on her behalf, for alleged damages arising from defendant's efforts to collect maintenance fees owed by plaintiff and her husband regarding their property located in Dorado, Puerto Rico. (61a)

Chevere testified:

> Q Would you look at paragraph number one, page one which says "one: on January four, 1999, the plaintiff's husband, Edward S. Irons, filed a complaint on her behalf for alleged damages arising from *defendant's efforts to collect maintenance fees owed by plaintiff* and her husband regarding the property located in Dorado, Puerto Rico".

Do you see that, sir?
A Yes
Q Is that averment at all true?
A Yes.

* * * *

BY MR. IRONS:

Q Do you deny that paragraph one is not the whole truth because it fails to set forth that portion of the truth which is that there was a controversy as to whether or not maintenance fees were quote "owed" unquote?
A What is stated on this paragraph is true and correct. The details of other controversies, I do not have—
Q Will you please answer the question, sir?
A This is the truth. Yes, it's true.
Q And it does not make any reference to the fact that a controversy regarding the payment of maintenance fees with the plaintiff was ongoing at the time you swore to this document, does it?
A This document is the truth. *This document on this paragraph does not make any reference to any discrepancy or controversies.*
Q *And so it is not the whole truth because it fails to make reference to the controversy*?
A We're talking about Article Number One on page one of the Motion to Dismiss for lack of Jurisdiction. That is true and correct.
Q *But it is not the whole truth, is it?*
A *I will not answer.* [Chevere deposition, 1/21/00 - Tr. 8, l. 3 to Tr. 10, l. 10; emphasis added; 49a]

APUDRI counsel Skerrett (who testified that he "prepared" the verified Motion to Dismiss) testified on January 20, 2000:

Q All right. The document says—sorry—says, "maintenance fees owed" quote-unquote. Whether or not those fees were owed was in dispute at that time?

A There was a dispute concerning those fees, yes.
Q At that time?
A Yes, at that time.
Q Do you deny that the statement in the Motion to Dismiss For Lack of Jurisdiction paragraph number one and so much thereof as reads; quote "collect maintenance fees owed by plaintiff" is misleading because it does not make any reference to the fact that whether or not the fees were owed was in dispute?
A *It is not misleading because there was a legal opinion already rendered* [i.e., Skerrett's own September 4, 1998 opinion] *and the maintenance fees were owed* in accordance to the association documents and legal opinion. And an effort was made--were being made at that time to collect the money from you and your wife after attempts to settle this matter with your previous counsel brought no results.
Q Now you referred to an opinion, is that the opinion about which you have testified?
A Yes.
Q To wit, *De La Cruz Exhibit One*?
A It was rendered [by Skerrett] on September four, 1998, yes. [Tr. 28, l. 20 to Tr. 29, l. 21; emphasis added; 47a-48a]

The Motion to Strike Verified "Motion to Dismiss for Lack of Jurisdiction" (53a) demonstrates, based on the deposition testimony of the notary who administered the verified oath to Chevere, that it is invalid under Puerto Rico law. The Motion to Strike states:

(iii) Notary Martinez Rodriguez has functioned as counsel for defendant in both the District of Columbia and Puerto Rico counterpart cases;

(iv) Rule 5 of the Puerto Rico Notary Rules of 1995 provides:

> A notary is not able to represent as counsel for a client in contentious litigation and, at the same time, serve as notary in the same case because it is a possible conflict of interest or the incompatibilities that can result therefrom. [Informal translation; subject to correction]

(v) Under Puerto Rico law, a document for use in a case which is notarized in violation of Puerto Rico Notary Rule 5 may be stricken as null and void by the court. *See Bermudez & Longo v. Puerto Rico Casting Steel Corp.*, 114 D.P.R. 808, 811 (1983), striking an affidavit in which the notary was attorney for the plaintiff. [54a]

The trial court dismissal order (14a) was filed on September 22, 2000 and docketed October 5, 2000. It is silent as to the Motion for Sanctions and as to the Motion to Strike. Petitioner filed a timely Rule 59(e) motion to vacate or alter and amend the dismissal order. The Rule 59(e) motion was denied by Order dated March 19, 2001 (10a). The gravaman of that denied Rule 59(e) Motion was that the court imposed on petitioner a preponderance of the evidence burden to prove personal jurisdiction; whereas, because there had been *no evidentiary hearing*, petitioner was actually required to make only a *prima facie* showing—just as the trial court's dismissal order recognized (18a).

The order denying the Rule 59(e) motion (10a) tries to argue that a mere status conference *with no notice that any opportunity to supplement the record would be available* was an "evidentiary hearing" (14a). After petitioner demonstrated that the court's statement in that order (referring to the misperceived "fact that the [status conference] hearing provided the parties an opportunity to supplement the

record"; 11a) was clear error, the trial court resorted to a fall-back position which deprived petitioner of any right to be heard. According to the trial court's March 19, 2001 Order:

> In fact, plaintiff does not . . . provide any new assertion that she met her *prima facie* burden of personal jurisdiction. As explained fully in the order granting dismissal, plaintiff failed to demonstrate personal jurisdiction under any standard of review. Thus, this argument must be denied. [11a]

No such "expla[nation]" appears in the dismissal order (14a), however. Shortly stated, because the trial court denied petitioner any opportunity to be heard on the *prima facie* personal jurisdiction issue, its dismissal order violates petitioner's Due Process rights.

Surprisingly, the Court of Appeals quoted the erroneous "as explained fully" statement from the Rule 59(e) denial order and agreed with it (6a).

The Court of Appeals also denied petitioner's request for a rehearing which again called attention to the same error (33a) and to the trip of APUDRI'S Chief Executive Officer to Washington, D.C. to negotiate the 1993 agreement (35a).

The trial court trivialized and then denied the Motion to Strike (53a) on the premise, contradicted by the record, that the defects (which it denigrates as "alleged") were "later cured" when the motion was "refiled" (12a, n. 2). According to the trial court: "The affidavit complained of was not part of the subsequent motion to dismiss" (12a, n. 2). This statement, however, was "clearly erroneous" (Sup.Ct.Civ.R. 52a) because the original Motion to Dismiss (61a) was refiled without change. See note 3, *supra*.[5]

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[5] Notwithstanding strong emphasis in the Brief for Appellant on this clear error by the trial court, the Court of Appeals adopted it as well. With regard to the Motion to Strike (53a), the trial court concluded that

The Court of Appeals also evaded any decision on the merits of the Motion for Sanctions (33a) which it trivialized and mischaracterized. According to the Court of Appeals, "the trial court reasonably concluded that APUDRI had remedied the *alleged* improprieties [6] and that such improprieties as may have occurred were not serious enough to merit sanctions in the circumstances" (7a).

PROCEEDINGS IN THE DISTRICT OF COLUMBIA COURT OF APPEALS

The Court of Appeals affirmed by an *unsigned* Memorandum Opinion and Judgment (1a-7a). It did so on April 20, 2002—27 days after the case was submitted on March 14, 2002. Its cavalier treatment of the case is demonstrated by the discussion *supra* of its affirmance, notwithstanding the contradictory record before it, of the trial court's denials of the Motion to Strike (53a) and Motion for Sanctions (33a). The Court of Appeals simply refused to rule on dispositive issues squarely before it.

"the procedural deficiencies complained of by the appellant were likewise corrected by APUDRI and that the motion to strike was not warranted. We have reviewed the record and agree with the trial court" (7a). Again, the "deficiencies" (7a) were *not corrected*. The *original* Motion to Dismiss (61a) *was resubmitted*. This is an appellate ruling that the verified Motion to Dismiss—unlawful and inadmissible in Puerto Rico where it was sworn—does not "warrant" (7a) a Motion to Strike.

[6] Again, the "improprieties", including false verification of the Motion to Dismiss (61a), were not "cured" *ab initio* by "refil[ing]" (12a, n. 2) of the original spurious Motion by a member of the District of Columbia bar some four months after it was wrongfully filed *pro se* in violation of trial court Rules 101(a)(1) and (2). The "improprieties" were actually proven by sworn deposition testimony and later aggravated by the refiling of the Motion without change.

The Brief for Appellant includes a Statement of Issues Presented for Review, as required by the Rules of the Court of Appeals. Issue 4 states:

> 4. Whether the September 22, 2000 (R334) and March 19, 2001 (R361) orders are void because the verified Motion to Dismiss was known, at the time, to be falsely sworn by the person who swore to it, the person who caused the motion to be prepared, and the notary who administered the oath. [page 2]

In its "Conclusion", the Brief of Appellant states:

> Appellant Irons seeks an order from this Court which: [page 41]
>
> * * * *
>
> (f) remands this case to the Superior Court for a ruling on the issues of whether the filing by the defendant corporation of the unworthy *pro se* Motion to Dismiss as ghostwritten by the defendant corporation's Puerto Rico counsel, Jose De La Cruz Skerrett, for verification by the defendant corporation's President, Diego Chevere, all without notice to the Superior Court, violated Fed.R.Civ.P. 11 and Rules of Professional Conduct 3.3 and 8.4(d) and (d), and, if so, for the imposition of sanctions including an award of attorneys' fees and expenses to Irons; [page 42]

However, the Court of Appeals Memorandum Opinion (1a) is silent as to each of these two dispositive issues squarely raised, in compliance with the Court's own rules, for disposition by it. Due process entitles petitioner to reasoned rulings on each of these issues, and on the other issues raised by the appeal which the Court of Appeals disregarded.

The Court of Appeals' convenient rulings that these issues involve merely "alleged improprieties" and "procedural

deficiencies" which are not "serious enough to merit sanctions" (7a) are absurd. Mr. Chevere's verification of the ghostwritten Motion to Dismiss (61a) simply was not "the whole truth" as he swore it to be, and then refused to reaffirm on his deposition. Mr. Skerrett, to testify that the Motion to Dismiss which he prepared for verification by Mr. Chevere, tacitly admitted on his deposition that the motion was misleading on its face, but tried to justify it nevertheless by citing his *own* pre-litigation opinion in which he assumed the role of the Court and "ruled" in favor of his client APUDRI.

Finally, the Court of Appeals posited its affirmance of the trial court's dismissal order on an improper appellate fact finding, *see Maine v. Taylor*, 471 U.S. 131, 145 (1986), that

> The District has no 'manifest interest' in providing appellant, a *District resident*, with a forum to litigate her grievances against this foreign defendant concerning property in a foreign jurisdiction. [citations omitted] Indeed, the only reason that APUDRI communicated at all with appellant in the District was because appellant lived there at the time the dispute over maintenance fees arose. [5a]

REASONS WHY WRIT SHOULD BE GRANTED

In this case, respondent through counsel procured dismissal on "due process" grounds of a falsely verified Motion to Dismiss (61a). The lower court refused even seriously to consider this wrongdoing and condoned it. In No. 02-26, the same defendant and the same counsel procured a remand order after a knowingly false representation of a material fact to the trial court. Again, the trial court and the Court of Appeals abstained from any serious consideration of the wrongdoing, but instead rewarded the wrongdoing by entry of a remand judgment to which neither respondent nor its counsel were entitled. This evasion of judicial responsibility should stop with this Court. Otherwise, court scandals may

get headline attention together with the ongoing church scandals and corporate scandals.

1. Question 1 is substantially identical to Question 4 in the pending Petition No. 02-26. These two petitions establish a pattern pursuant to which the lower court's have disdained responsibility for enforcing the principles of professional conduct promulgated to insure a zero tolerance for lack of candor and counsel, in a parallel pattern, have violated the duty of candor to the tribunal not only as set forth in Rule 3.3 of the Rules of Professional Conduct, but also required "as a necessary protection of the decision-making process" and by "the broader general duty of candor and good faith required to protect the integrity of the entire judicial process". *United States v. Schaffer Equipment Co.*, 11 F.3d 450, 458 (4 Cir. 1993), citing *Chambers v. NASCO, Inc.*, 501 U.S. 32 (1991) and *Tiverton Board of License Commissioners v. Pastore*, 469 U.S. 238 (1965) ("[r]ebuking counsel for failing to comply with a duty of candor broader than Rule 3.3"). 11 F.3d at 458.

In this case, as in No. 02-26, "rulings" have been made *sub silentio* or by a "denied" generality with no application of the law to the record facts. These "rulings" violate due process because they effectively deny petitioner any right to appeal or to seek meaningful review by this Court. Other rulings are purportedly justified by trial court "findings" contradicted by the record. *De novo* appellate fact findings are improperly asserted to support seemingly pre-determined dispositions of important issues. Still other key issues, fairly and squarely raised for determination on the record, are simply ignored. For example, the Court of Appeals in this case stood silent with respect to petitioner's "Issue 4" on the appeal (quoted *supra*, page 16). In addition, the Court of Appeals also refused to consider petitioner's affirmative request for a ruling, consistent with *Duran v. Carris*, 238 F.3d 1268, 1271-

1272 (10 Cir. 2001)[7] that the respondent's reliance on the motion to dismiss (61a), ghostwritten by counsel, violated at least Rules 3.3 and 8.4 of the Rules of Professional Conduct. The real world consequence is conflict between the Court of Appeals for the District of Columbia and the Tenth Circuit.

2. Without more, the mere statement of Question 2 invites an affirmative answer for all of the same reasons as those stated regarding Question 1. The fact premise of Question 2, i.e., that the Motion to Dismiss (61a) was falsely verified, is proven by sworn deposition testimony of the person who verified it and the counsel who was its ghostwriter.[8] The condonation of the ghostwritten Motion to Dismiss (61a) clashes with *inter alia* the decision of the Tenth Circuit in *Duran v. Carris*, 238 F.3d 1268, 1271-1272 (10 Cir. 2001) (the filing of ghostwritten pleadings signed by a non-lawyer party may violated Fed.R.Civ.P. 11(a) and Rules of Professional Conduct 3.3 and 8.4(c) and (d)).

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[7] According to *Duran*:

> Fed.R.Civ.P. 11(a) requires that "[e]very pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name, or if the party is not represented by an attorney, shall be signed by the party." Mr. Snow's actions in providing substantial legal assistance to Mr. Duran without entering an appearance in this case not only affords Mr. Duran the benefit of this court's liberal construction of pro se pleadings, see *Haines v. Kerner*, 404 U.S. 519, 520-21, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972), but also inappropriately shields Mr. Snow from responsibility and accountability for his actions as counsel.

238 F.3d at 1271-1272.

[8] As noted in No. 02-26, the issue of whether counsel's opinion, upon which Mr. Skerrett relied at his deposition to say that the averment in paragraph 1 of the verified Motion to Dismiss (61a) (which Chevere swore was "true in every respect" (64a)) was not "misleading" (see 48a) is correct, has been *sub judice* since *August 29, 2001 before the Puerto Rico Court of Appeals.*

3. Questions 3 and 4 raise important issues regarding the interpretation and application of the local Rule 11 (which is identical to Fed.R.Civ.P. 11). Because the ghostwritten Motion to Dismiss (61a) was not signed by counsel, but instead by the respondent corporation's non-lawyer President, who was induced by the ghostwriter counsel to sign it, the question is how Rule 11(b), which applies only to persons who sign the challenged pleading, is to be applied, and whether the sanctions provided by Sup.Ct.Civ.Rule 11(c) should nevertheless be imposed upon the counsel who procured the non-lawyer signature to the offensive Motion to Dismiss (61a).

4. As to questions 3 and 4, it has been clearly shown that the denial of the Motion for Sanctions (41a) apparently was based on a trial court finding, flatly contradicted by the record but nevertheless adopted by the Court of Appeals, that the falsely verified Motion to Dismiss was somehow "cured" and "not a part of the subsequent Motion to Dismiss" (12a, n. 2) as it was resubmitted.

Actually, the *original*, spurious Motion to Dismiss was resubmitted without any change whatever. *See* 38a and n. 3, *supra*, p. 6. This plain error is at the center of the absurd trial and appellate rulings that the filing and reliance upon a falsely sworn Motion to dismiss did not violate Rule 11(b).

These rulings clash with the object of Rule 11 which is the deterrence of improper litigation conduct in pleadings. *See Massengale v. Ray*, 267 F.3d 1298 (Fed.Cir. 2001).

5. Question 5 raises an important question as to what quantum of evidence is necessary to establish a *prima facie* case for personal jurisdiction under the Fifth Amendment, and thus entitle a resident plaintiff to an evidentiary hearing. In this case, there was *no* personal jurisdiction evidentiary hearing on the merits because the lower courts held that to be entitled to an evidentiary hearing, petitioner must *first*

demonstrate a *prima facie* case for personal jurisdiction. But the lower courts also denied petitioner any right to be heard regarding the *prima facie* issue.

The question is important because there apparently is no relevant published precedent that defines any standard for such a *prima facie* showing. The pleading record in this case does show, however, as the trial court recognized, that the "crux" (25a) of petitioner's personal jurisdiction case is a 1993 contract between petitioner, a District of Columbia resident, and a non-resident corporation, as subsequently amended in 1997 as to which the respondent was "proactive" (26a) by a document signed by petitioner in Washington, D.C., all as alleged by the Second Amended Complaint.

Because "[i]t is sufficient for the purposes of due process that the suit was based on a contract [here the 1993 agreement and its amendment] which had a substantial connection with that State [the District of Columbia]", *McGee v. International Life Ins. Co.*, 355 U.S. 220, 224 (1957), that contract should have been sufficient at least to entitle petitioner to an evidentiary hearing. However, the courts below, *without any explanation*, rejected the 1993 contract as amended in 1997 as insufficient to show even a *prima facie* case for personal jurisdiction, and so denied petitioner *any opportunity* to submit additional evidence.

The issue is important. The Petition should be granted to permit clarification of this Court's decisions that define the due process prerequisites for personal jurisdiction over a non-resident defendant corporation.

Respectfully submitted,

EDWARD S. IRONS
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APPENDIX

APPENDIX

DISTRICT OF COLUMBIA COURT OF APPEALS

[Filed Apr 10, 2002]

No. 01-CV-436
CA-24-99

MARY L. IRONS,

Appellant,

v.

ASOCIACIÓN DE PROPRIETARIOS DE LA URBANIZACIÓN DORADO REEF, INC.,

Appellee.

Appeal from the Superior Court of the District of Columbia, Civil Division

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(Hon. Gregory E. Mize, Trial Judge)

(Submitted March 14, 2002 Decided April 10,2002)

Before: RUIZ and GLICKMAN *Associate Judges*, and FERREN, *Senior Judge*.

MEMORANDUM OPINION AND JUDGMENT

Appellant Irons contends that the trial court erred in dismissing her complaint for lack of personal jurisdiction over defendant-appellee, in failing to enter a default judgment against defendant appellee, and in denying appellant's motions to impose sanctions on defendant-appellee and to strike defendant-appellee's motion to dismiss. We affirm.

I.

A resident of the District of Columbia, appellant is the owner of real property in the Commonwealth of Puerto Rico. Appellee Asociación de Proprietarios de la Urbanización Dorado Reef, Inc. (APUDRI) is a corporation formed under Puerto Rican law; it operates as a homeowners' association for the Dorado Reef housing development. Appellant once owned all the real estate on which the housing development now sits, but eventually she sold all but one parcel of that land to APUDRI's predecessor, Dorado Reef, S.E., a partnership. In 1993, appellant and APUDRI reached a "qualified agreement" that imposed restrictive covenants on APUDRI's parcels and made appellant a member of the homeowners' association. In 1995, APUDRI submitted to Irons an invoice for unpaid maintenance fees for her property, and at that point there arose between APUDRI and Irons a lengthy dispute over whether Irons was in fact obligated to pay those fees to APUDRI.

In her Second Amended Complaint, appellant brought claims against APUDRI in Superior Court alleging tortious interference, breach of contract, and negligence—all relating to the Puerto Rico property. Specifically, appellant alleged that APUDRI had tortiously interfered with existing and prospective contractual relationships between appellant and her real estate broker and prospective purchasers of the property by notifying the broker that the prospective purchasers would be held liable for appellant's alleged debt in the form of the unpaid maintenance fees. She further alleged that APUDRI had violated the 1993 agreement by making repeated claims for the unpaid maintenance fees where the agreement specifically stipulated that appellant had the right to renounce both membership in APUDRI and/or the obligation to pay maintenance fees. In support of the negligence count, appellant alleged that APUDRI breached its duty to provide security for appellant's property by

negligently permitting third parties to enter and use the property without authorization, to cause damage to the property, and to steal personal property of appellant from the premises.

II.

In the complaint, appellant contended that the Superior Court had personal jurisdiction over APUDRI pursuant to the District's Long-Arm Statute, which states in relevant part that

> "(a) A District of Columbia Court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a claim for relief arising from the person's— (1) transacting any business in the District of Columbia . . . [or] (4) causing tortious injury in the District of Columbia by an act or omission outside the District of Columbia if he regularly does or solicits business, engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed, or services rendered, in the District of Columbia."

D. C. Code §§ 13-423 (a)(1) & (a)(4) (1995 Repl. & 2001).

APUDRI responded that the long-arm statute did not confer Superior Court jurisdiction over APUDRI, and that any attempt to exercise personal jurisdiction over APUDRI would violate due process. After lengthy and complicated proceedings which included a motion by APUDRI to dismiss the complaint for lack of personal jurisdiction and a response by appellant,[1] the trial court issued an order on September 22,

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[1] Among the numerous other motions that were filed in this case were motions for entry of default and judgment (filed on March 22, 1999, April 6, 1999, and May 3, 1999), a motion by appellant for the imposition of sanctions against APUDRI and its counsel (filed on March 10, 2000), and a motion by appellant to strike APUDRI's motion to dismiss (filed on March 10, 2000). While orders presenting rulings on the March 22, 1999 and April 6, 1999 motions for entry of default and judgment are not

2000, dismissing appellant's complaint for lack of personal jurisdiction. Appellant then filed a Super. Ct. Civ. R. 59 (e) motion to vacate, alter, or amend that order, which the trial court denied on March 19, 2001. Appellant then filed a motion for relief from the September 22 order pursuant to Super. Ct. Civ. R. 60 (b)(3) and 60 (b)(6) and a motion for recusal and motion to vacate. The trial court denied these motions.

In determining whether there is personal jurisdiction over a nonresident defendant, the court applies no "mechanical tests" or "talismanic formulas." *Shoppers Food Warehouse v. Moreno*, 746 A.2d 320, 329 (D.C.) (en banc), *cert. denied*, 530 U.S. 1270 (2000). The court, rather, must focus on the relationship among the defendant, the forum state, and the litigation to discern how the facts underlying that relationship would comport with due process notions of reasonableness, fair play, and substantial justice if personal jurisdiction over the defendant were permitted. *Shaffer v. Heitner*, 433 U.S. 186, 186, 204 (1977); *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945); *Mouzavires v. Baxter*, 434 A.2d 988, 992-93 (D.C.1980) (en banc).

Here, the facts do not reveal transaction of any business in the District of Columbia within the meaning of the first subsection of the long-arm statute. D.C. Code § 13-423 (a)(1) (1995 Repl. & 2001). The telephone calls, facsimile transmissions, and mailings by APUDRI to appellant in the

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themselves included in the record, the record reveals that appellant filed a motion to reconsider denial of the April 6, 1999 motion and to grant entry of default and judgment (the May 3, 1999 motion referenced above); that the trial court apparently denied the April 6, 1999 motion (referred to in the May, 3, 1999 motion); and that the trial court denied the May 3, 1999 motion. As to the motion for sanctions and the motion to strike, the trial court ruled that these two motions "were *ipso facto* rendered moot" by its order granting APUDRI's motion to dismiss and hence denied appellant's emergency motion for disposition of those motions.

District concerning contracts formed in Puerto Rico covering property in Puerto Rico comprised contacts with the District of Columbia too tenuous to justify personal jurisdiction here over APUDRI, a Puerto Rico corporation. *COMSAT Corp. v. Finshipyards S.A.M.*, 900 F. Supp. 515, 520-22 (D.D.C.1995) (holding that mail and wire communications occurring between plaintiff in District of Columbia and foreign defendant do not, standing alone, provide basis for personal jurisdiction under District's long-arm statute); *Bueno v. La Compania Peruana de Radiodifusion*, 375 A.2d 6, 8-9 (D.C. 1977) (holding that where nonresident defendants were not alleged to have conducted any business or to have made any contracts for services in District of Columbia, requirements of District's long-arm statute for establishing personal jurisdiction over nonresident defendants were not satisfied); *Shoppers Food Warehouse*, 746 A.2d at 329, 331. Appellee APUDRI has not "purposefully avail[ed]" itself of the privilege of conducting business in the District, including legal protections, such that it would be fair and reasonable to anticipate suit against APUDRI here. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980); *AMAF Int'l Corp. v. Ralston Purina Co.*, 428 A.2d 849, 851 (D.C.1981). The District has no "manifest interest" in providing appellant, a District resident, with a forum to litigate her grievances against this foreign defendant concerning property in a foreign jurisdiction. *Shoppers Food Warehouse*, 746 A.2d at 332 (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 473 (1985)). Indeed, the only reason that APUDRI communicated at all with appellant in the District was because appellant lived there at the time the dispute over maintenance fees arose.

Nor does the record demonstrate that APUDRI regularly undertakes or solicits business in the District of Columbia, engages in a persistent course of conduct here, or derives substantial revenue in the District sufficient to satisfy the jurisdictional requirements for a tort action under subsection

four of the long-arm statute. D.C. Code § 13-423 (a)(4) (1995 Repl. & 2001); *see Parsons v. Mains*, 580 A.2d 1329-30. (D.C.1990) (discussing scope of § 13-423 (a)(4) (regularly conducting business) as much narrower than jurisdictional reach of § 13-423 (a)(1) ("transacting any business") and thus requiring more continuing minimum contacts than § 13-423 (a)(1)).

III.

This conclusion is not affected by appellant's contention that the trial court employed the wrong standard of proof in granting APUDRI's motion to dismiss. The judge stated expressly in the order granting APUDRI's dismissal motion that the court lacked personal jurisdietion. Then, in his March 19, 2001 order denying appellant's Rule 59 (e) motion to vacate, alter, or amend, the judge reiterated his ruling: "[plaintiff] makes only the blanket assertion that she met her *prima facie* burden of personal jurisdiction. As explained fully in the order granting dismissal, plaintiff failed to demonstrate personal jurisdiction under any standard of review. Thus, this argument must be denied." We agree.

Nor, given the lack of personal jurisdiction, did the trial court have the authority (as appellant maintains) to enter a default judgment for appellant for APUDRI's alleged procedural deficiencies. Default judgment against a party is unavailable when the court lacks personal jurisdiction over the party. *See Cruz v. Sarmiento*, 737 A.2d 1021, 1026 (D.C. 1999) (default judgment in absence of effective service of process held void because court did not have personal jurisdiction and "no amount of discretion can create jurisdiction where there is none."); *accord McLaughlin v. Fidelity Sec. Life Ins.*, 667 A.2d 105, 107 (D.C.1995).

Finally, appellant asserts that the trial court erred in concluding that appellant's motions to impose sanctions and to strike APUDRI's motion to dismiss "were *ipso facto*

rendered moot by the September 22, 2000 order [granting the motion to dismiss]." Assuming that the trial court had the power to impose sanctions on APUDRI's counsel and officers (as appellant contends), despite lack of personal jurisdiction over APUDRI, we conclude that the trial court did not abuse its discretion or otherwise err in ruling in its March 19, 2001 order, in the alternative, that the motions at issue for sanctions and to strike APUDRI's motion to dismiss "would have been summarily denied [on the merits]." As to the arguments raised by appellant in support of the motion for sanctions, the trial court reasonably concluded that APUDRI had remedied the alleged improprieties and that such improprieties as may have occurred were not serious enough to merit sanctions in the circumstances. With regard to the motion to strike, the trial court concluded that the procedural deficiencies complained of by appellant were likewise corrected by APUDRI and that the motion to strike was not warranted. We have reviewed the record and agree with the trial court. Accordingly, it is

ORDERED and ADJUDGED that the judgment on appeal is affirmed.

FOR THE COURT:

/s/ Garland Pinkston, Jr.
GARLAND PINKSTON, Jr.
Clerk of the Court

DISTRICT OF COLUMBIA
COURT OF APPEALS

[Filed May 30, 2002]

No. 01-CV-436
CA24-99

MARY L. IRONS,

Appellant,

v.

ASOCIACION DE PROPIETARIOS DE LA URBANIZACION DORADO REEF, INC.,

Appellee.

BEFORE: RUIZ and GLICKMAN, *Associate Judges*; FERREN, *Senior Judge*.

ORDER

On consideration of appellant's petition for rehearing, and appellant's motion for leave to submit the lodged supplement to petition, it is

ORDERED that the motion is granted and the Clerk is directed to file the lodged supplement to petition. It is

FURTHER ORDERED that the petition for rehearing is denied.

PER CURIAM

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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

Case No. 99CA24
Judge Mize
Calendar No.: 10

MARY L. IRONS,

Plaintiff,

v.

ASOCIACION DE PROPRIETARIOS
DE LA URBANIZACION DORADO REEF, INC.,

Defendant.

ORDER

Upon consideration of plaintiff's (1) motion for relief from the September 22, 2000 order (docketed October 5, 2000) and (2) motion for recusal and to vacate the October 5, 2000 order, both of which were filed March 21, 2001, it is this 28th day of March 2001,

ORDERED that plaintiffs motions are denied for the reasons stated in this court's March 19, 2001 order.

/s/ Gregory Mize
GREGORY MIZE
Judge
SIGNED IN CHAMBERS

Copies mailed from chambers to:

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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

Case No. 99CA24
Judge Mize
Calendar No.:10

MARY L. IRONS,

Plaintiff,

v.

ASOCIATION DE PROPRIETARIOS,
DE LA URBANIZACION DORADO REEF, INC.,

Defendant.

ORDER

Before the court are (1) plaintiff's motion pursuant to Super. Ct. Civ. R. 59 (e) to vacate or alter and amend order docketed October 5, 2000 and defendant's opposition; and (2) plaintiff's emergency motion for disposition of motions, defendant's opposition and plaintiff's reply.

The court notes preliminarily that plaintiff s motions refer to the order of September 22, 2000 (docketed October 5, 2000) in which, after careful review of the record and the parties' pleadings and an extensive analysis of the applicable law, this court issued a thirteen-page order granting defendant's motion to dismiss for lack of personal jurisdiction.

I. Motion to Vacate or Alter and Amend Order Docketed October 5, 2000

Plaintiff bases her motion to vacate the order granting dismissal on two grounds. First, plaintiff argues that the court imposed a preponderance of the evidence standard, whereas plaintiff should only have been required to demonstrate a

prima facie case for personal jurisdiction. Plaintiff's basis for this assertion is that the June 30, 2000 hearing before the court was merely a "status conference" and that the parties were not provided with advance notice that they would have the opportunity to supplement the record. *See* Pl.'s Mot. Vacate at 3.

This argument is without merit. First, the fact that the hearing was noticed as a "status conference" does not change the fact that the hearing provided the parties with an opportunity to supplement the record. Both parties at the hearing specifically declined the invitation by the court to submit new or additional material on the issue of personal jurisdiction, and the record indicates that every opportunity to substantiate their respective positions was afforded to these parties throughout the lengthy discovery process. In fact, plaintiff does not complain of insufficient discovery or pleading opportunities and does not provide any new evidence on this issue, but rather makes only the blanket assertion that she met her *prima facie* burden of personal jurisdiction. As explained fully in the order granting dismissal, plaintiff failed to demonstrate personal jurisdiction under any standard of review. Thus, this argument must be denied.

Second, plaintiff contends that two motions filed concurrently with plaintiff's personal jurisdiction brief required consideration before a judgment on the merits of the motion to dismiss could properly be issued. The two motions referred to are plaintiff s motion for sanctions, which was filed March 10, 2000, and plaintiffs motion to strike defendant's verified "motion to dismiss for lack of jurisdiction," which was also filed March 10, 2000.

This argument must also be denied. In granting defendant's motion to dismiss, the court implicitly acknowledged that it did not have jurisdiction to adjudicate any of plaintiff's claims. Thus, any pending motions held in abeyance until the

threshold issue of personal jurisdiction was ruled upon were *ipso facto* rendered moot by the September 22, 2000 order.[2]

II. Emergency Motion for Disposition of Motions

Plaintiff requests disposition of the following motions: (1) plaintiff's motion for sanctions, filed March 10, 2000; (2) plaintiff's motion to strike defendant's verified "motion to dismiss for lack of personal jurisdiction," filed March 10, 2000; and (3) plaintiff s motion pursuant to Super. Ct. Civ. R. 59 (e), filed October 10, 2000.

In light of the fact that the first two motions are addressed and deemed moot as per the discussion above and that the third motion is denied in the instant order, this motion is likewise denied.

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[2] Even if the court had deemed it necessary to reach the merits of these two motions, they would have been summarily denied. In the motion to strike, plaintiff argues that defendant's motion to dismiss was notarized in violation of Puerto Rican law because the notary verified a document allegedly known by her to be untrue and that the notary was an attorney active in the case. As defendant points out in opposition, plaintiff is basing this argument on the original motion to dismiss which was later cured of alleged defects and refiled by defendant with the court's permission on May 13, 1999. The affidavit complained of was not part of the subsequent motion to dismiss.

In the motion for sanctions, plaintiff contends that sanctions are proper because (1) defendant corporation originally filed its motion to dismiss proceeding *pro se*; (2) defendant averred in its motion to dismiss that plaintiff filed a complaint for "alleged damages arising from defendant's efforts collect maintenance fees" but did not state that these fees were in dispute; and (3) defendant contends in its motion to dismiss that it does not "make business" in Washington, D.C., when plaintiff asserts that its communications with her constitute transacting business. Again, with regard to plaintiff's first argument, defendant refiled its motion to dismiss with the appearance of District of Columbia counsel, thus curing this defect. Plaintiff s other contentions are nonsensical and without merit.

Accordingly, it is this 19th day of March 2001,

ORDERED that plaintiff's motion pursuant to Super. Ct. Civ. R. 59(e) to vacate or alter and amend order docketed October 5, 2000 is denied.

ORDERED that plaintiff's emergency motion for disposition of motions is denied as moot.

/s/ Gregory Mize
GREGORY MIZE
Judge
SIGNED IN CHAMBERS

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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

Case No. 99CA24
Judge Mize
Calendar No.:10

MARY L. IRONS,

Plaintiff,

v.

ASSOCIATION DE PROPRIETARIOS,
DE LA URBANIZACION DORADO REEF, INC.,
Defendant.

ORDER

Before the court are defendant Asociacion de Propietarios de la Urbanizacion Dorado Reef, Inc.'s ("Dorado Reef") motion to dismiss for lack of personal jurisdiction and plaintiff Mary Irons' ("Irons") opposition. After full and fair consideration of these filings, the court hereby grants defendant's motion.

A. Background

Plaintiff Irons, a citizen of the District of Columbia, is an owner and part-time resident of real property located in the Commonwealth of Puerto Rico. *See* 2d Am. Compl. ¶ 2. The defendant is a corporation of Puerto Rico operating as a homeowners association for the Dorado Reef housing development. *See* Def.'s Mot. to Dismiss ¶ 3.

Plaintiff Irons seeks declaratory and injunctive relief and damages for tortious interference, breach of contract and negligence. *See* 2d Am. Compl. ¶ 1. Plaintiff alleges that defendant has subjected her to a continuous string of

meritless claims for back association maintenance fees and assessments on plaintiff's property located in Puerto Rico. *See id.* She further asserts that defendant has "directly, intentionally, wrongfully, and maliciously interfered" with efforts to sell and market said property by notifying a local realtor of Puerto Rico that prospective purchasers would be held liable for plaintiff's alleged debt. *See id.*

The sole issue before this court is whether the court has the authority to adjudicate the instant case. Defendant argues that the court (1) lacks personal jurisdiction over defendant under the D.C. Long-Arm Statute [3] and (2) an exercise of jurisdiction would not comport with Due Process. *See* Def's Mot. to Dismiss at 4.

The facts related to the issue of personal jurisdiction are, for the most part, undisputed. Plaintiff originally owned the real estate upon which the Dorado Reef housing development now sits. *See* 2d Amend. Compl. ¶¶ 6-7. She sold all but one parcel of the land to defendant's predecessor, Dorado Reef, S.E., in 1993. At the time, Dorado Reef, S.E. was a special

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[3] In relevant part, D.C. Code § 13-423 enumerates the following:

> (a) A District of Columbia Court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a claim for relief arising from the person's—
>
> (1) transacting any business in the District of Columbia;
>
> * * * *
>
> (4) causing tortious injury in the District of Columbia by an act or omission outside the District of Columbia if he regularly does or solicits business, engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed, or services rendered, in the District of Columbia
>
> * * * *
>
> (b) when jurisdiction over a person is based solely upon this section, only a claim for relief arising from acts enumerated in this section may be asserted against him.

partnership controlled and operated by its managing partner Federico Sanchez Febles ("Sanchez"). *See id.* In 1993, the two parties reached a "qualified agreement" that imposed restrictive covenants on the remaining parcel and made plaintiff a member of the homeowners association. *See id.* ¶¶ 14-15. Shortly thereafter, Sanchez incorporated Dorado Reef, S.E., making it a successor in interest to the Dorado Reef housing development.[4] *See id.* ¶ 11. In 1997, after a series of negotiations conducted interstate by phone, mail and facsimile, and subsequent communications in Puerto Rico, the parties amended the 1993 agreement before a public notary in Puerto Rico. *See id.* ¶ 25.

Defendant Dorado Reef asserts that dismissal is proper because the at issue contract, real property, unpaid maintenance fees and alleged misconduct all arose or occurred in the Commonwealth of Puerto Rico. *See id.* at 6; Def.'s Reply Br, at 4. Defendant emphasizes further that the only connection defendant corporation has had with the District of Columbia is limited communications with plaintiff at her District of Columbia address that merely refer to matters which clearly arose in Puerto Rico and from contractual transactions which occurred exclusively in Puerto Rico. *See id.* Defendant argues that its alleged conduct in Puerto Rico and in the District fails to amount to "transacting business in the District of Columbia" pursuant to the Long-Arm Statute, nor does plaintiff's alleged tortious injury meet the statutory elements for such a claim. *See* Def's Reply Br. at 4.

In opposition, plaintiff asserts that this court has personal jurisdiction because defendant has engaged in a pattern of contact that satisfies both the District's Long-Arm Statute and

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[4] For purposes of this order, the court treats defendant's status as a partnership and later as a corporation as functional equivalents. See also infra note 5 for further discussion.

Constitutional Due Process. In particular, plaintiff relies on sections 423(a)(1) and (a)(4) and section 13-423(b) of the Long-Arm Statute. *See* 2d Amend. Compl. ¶ 5; Pl.'s Personal Jurisdiction Br. at 37. With regard to section 423(a)(1), plaintiff argues that defendant has for several years, "transacted business" in the District of Columbia by renegotiating the 1993 agreement, and, beginning in 1995, by attempting to enforce its claim for maintenance fees. *See id.* ¶ 5. In accordance with Due Process, plaintiff contends that the renegotiation process, which was conducted through communications between plaintiff's Washington, D.C. residence and defendant in Puerto Rico, and defendant's persistent attempt to collect maintenance fees, constitute a "continuing presence" designed to advance defendant's corporate interest in the District. *See* Pl.'s Personal Jurisdiction Br. at 36.

Plaintiff also attempts to establish personal jurisdiction against defendant pursuant to sections 13-423(a)(4) and 13-423(b) of the Long-Arm Statute. *See* 2d Am. Compl. ¶ 5(b). She alleges that defendant has committed several acts in Puerto Rico which have damaged plaintiff in the District of Columbia. Among other things, plaintiff alleges that defendant has tortiously interfered with her effort to sell property in Puerto Rico. *See id.* ¶ 35. Plaintiff also asserts that defendant has negligently failed to provide security for her property in Puerto Rico, resulting in theft, trespass, and other damage to said property. *See id.* ¶¶ 46-49. In her opposition to the motion to dismiss, plaintiff prays for an order granting general and specific personal jurisdiction in this matter based on defendant's contacts and conduct that she alleges constitutes a continued corporate presence and tortious injury in the District of Columbia. *See* Pl.'s Personal Jurisdiction Br. at 37.

B. Standard of Review—Motion to Dismiss Under Rule 12(b)(2)

Under the D.C. Long-Arm Statute, a plaintiff has the burden of demonstrating a factual basis for the exercise of jurisdiction over a defendant. *See Reuber v United States*, 750 F.2d 1039, 1052 (D.C. Cir.1984). Facts asserted by the plaintiff are presumed to be true unless directly contradicted by affidavit. *See Dooley v. United Technologies Corp.*, 786 F.Supp. 65, 70 (D.D.C 1992) (quoting *Data Disc, Inc. v. Systems Technology Associates, Inc.*, 557 F.2d 1280, 1285 (9th Cir.). Generally, in passing upon a defendant's Rule 12(b)(2) motion to dismiss for lack of personal jurisdiction, a court is granted more procedural leeway. *See Data Disc, Inc. v. Systems Technology Associates, Inc.*, 557 F.2d 1280, 1285 (9th Cir.).[5] It may determine the motion on the basis of affidavits alone, grant discovery, or conduct a preliminary hearing on the merits. *Id.*

Where the parties are limited to written submissions, such as affidavits, plaintiff need only make a prima facie showing to prevail on a motion to dismiss for want of jurisdiction. *See Dooley, supra*, 786 F. Supp. at 70 (citation omitted). If the court allows for an evidentiary hearing, plaintiff must demonstrate personal jurisdiction by a preponderance of evidence standard. *See CutCo Indus., v. Naughton*, 806 F.2d 361 (2d Cir.1986), *see also Marine Midland Bank, N.A. v. Miller*, 664 F.2d 899, 904 (2d Cir.1981). In the instant case, subsequent to limited jurisdictional discovery, a hearing was held on June 30, 2000 to give the parties an opportunity to

[5] Superior Court Civil Rule 12(b) is identical to its federal counterpart, Federal Rule of Civil Procedure 12(b). *American Insurance Co. v. Smith*, 472 A.2d 872, 873 n.3 (D.C.1984). As such, this court looks with favor on the federal authorities where there exists no clear precedent in the jurisdiction. *Demus v. U.S.*, 714 A.2d 858, 859 (1998).

supplement the record. At that time, each side declined the invitation to bring forth new material; instead each relied on their respective briefs.

C. Personal Jurisdiction

1. General Principles of Due Process

Normally, this court's analysis requires a two-step process in determining whether personal jurisdiction exists. *See Mouzavires v. Baxter*, 434 A.2d 988, 992 (D.C. 1980) (en banc). First, the court must examine whether plaintiff has alleged sufficient facts to reach defendant under the provisions of the applicable District of Columbia Long-Arm Statute. *Id.* If the answer to the first inquiry is in the affirmative, the court proceeds to the Due Process test. *Id.* The inquiry need not be bifurcated, however, if statutory provisions are coextensive with the Fifth Amendment Due Process Clause. *Id.* (citing *Textile Museum v. F. Eberstadt & Co.*, 440 F. Supp. 30, 31 (D. D.C.1977)); *see also World-Wide Volkswagon Corp. v. Woodson*, 444 U. S. 286, 290, 100 S.Ct. 559, 62 L.Ed. 2d 490 (1980).

D.C. Code, Title 13, section 423(a)(1) permits the exercise of personal jurisdiction to the full extent permitted by Due Process. *See Fisher v. Bander*, 519 A.2d 162,163 (D.C.1986); *see also COMSAT Corp. v. Finshipyards S.A.M.*, 900 F. Supp. 515, 520 (citing *First Chicago Int'l v. United Exchange Co. Ltd.*, 836 F.2d at 1377). As section 13-423(a)(1) reaches the breadth of Due Process, analyzing whether other provisions of the D.C. Long-Arm Statute are satisfied would be superfluous if defendant's contacts are insufficient to comport with Due Process. Accordingly, the personal jurisdiction inquiry need not be bifurcated and the court shall commence with a Due Process analysis.

In determining whether personal jurisdiction exists, there are no "mechanical tests" or "talismanic formulas"; rather the facts of each case must be weighed against the principles set

by *International Shoe Co. v. Washington* and its progeny. *See Shoppers Food Warehouse v. Moreno*, 746 A.2d 320, 329 (D.C. 2000) (en banc). As the benchmark, *International Shoe* requires that in order to subject a non-resident defendant to a judgment *in personam*, defendant must have certain minimum contacts with the forum such that the maintenance of a suit does not offend traditional notions of fair play and substantial justice. *International Shoe Co. v. Washington*, 326 U.S. 310, 317, 66 S. Ct.154, 90 L. Ed. 95 (1945). The demands of Due Process are met when contacts of a corporation with a forum are of such a quality as make it reasonable to require the corporation to defend the particular suit brought in that forum. *Id.* A non-resident's enjoyment of the privilege of conducting business in the forum carries with it an obligation to respond to suit there. *Id.* at 319; *see also Hanson v. Denckla*, 357 U.S. 235, 253, 78 S. Ct.1228, 2 L. Ed. 2d 1283 (1958). Although in *International Shoe*, the U.S. Supreme Court treated the concepts of "minimum contacts" and "fair play and substantial justice" as a singular standard governing an assertion of personal jurisdiction, subsequent Supreme Court cases have severed the standard into a two-pronged test. *See World-Wide Volkswagen, Corp., supra*, 444 U.S. at 291-292,100 S. Ct. 559 (citations omitted). This court will first look to whether defendant has sufficient contacts with the forum such that an assertion of personal jurisdiction comports with Due Process, before considering, if necessary, whether it is also fair to have defendant haled into court here. *Mouzavires, supra*, 434 A.2d at 992. In this regard, a court is divested of its power to render a valid judgment upon a finding of no contacts. *See World-Wide Volkswagen, supra*, 444 U.S. at 294,100 S. Ct. 559. This is so even when a court is faced with a defendant who would suffer no inconvenience from defending a suit in the forum state, when that forum state has a strong interest in hearing the case, or when that forum state is actually the most convenient location for litigation. *See id.*

Depending on the quality and nature of the contacts, the court can exercise general and/or specific jurisdiction. In *Shoppers Food Warehouse, supra*, the court distinguished between the two types of judicial empowerment. *General* jurisdiction occurs when the amount of activity within the forum by the defendant reaches a level that may be described as so substantial as to be "sufficiently systematic and continuous." 746 A.2d at 331. When this is evident a defendant may be sued for any claim, "even one completely unrelated to its in-state activities." *Id.* On the other hand, if the contacts within the forum are not "sufficiently continuous and systematic," the court may assert *specific* jurisdiction whenever the defendant "has purposefully directed [its] activities at residents of the forum and the alleged injuries arose out of or relate to those activities." *Id.*

In the area of interstate contracts, a non-resident has the necessary contacts with the forum state where it has a contract with a substantial connection to the forum state. *See McGee v. International Life Ins. Co.*, 355 U.S. 220, 223, 78 S. Ct.199, 2 L. Ed. 223 (1957). Put another way, where a party has "reached out beyond its domiciliary state" and has created continuing obligations and relationships with citizens of another state, that party is subject to the regulations and sanctions in the other state for consequences of its actions. *Burger King Corp. v. Rudzewicz*, 471 U.S. 476, 477, 105 S. Ct. 2174, 85 L. Ed. 2d 528 (1985). However, the nonresident must have "purposefully availed" itself of the privilege of conducting activities with the forum state such that it can be said it should have reasonably anticipated being answerable to claims in the court there. *World-Wide Volkswagon Corp., supra*, 444 U.S. at 290, 100 S. Ct. at 563; *Smith v. Jenkins*, 452 A.2d 333, 336 (D.C.1982). When a corporation purposefully avails itself of the privilege of conducting activities within the forum state, it has clear notice that it is subject to suit there. *See Shoppers Food Warehouse*, 746

A.2d at 327 n.9 (citing *AMAF Int'l Corp. v. Ralston Purina Co.*, 428 A.2d 849, 851(D.C.1981)).

2. Application by Courts in the District of Columbia

Similarly, in the District of Columbia, the most critical inquiry is not whether the nonresident defendant is physically present in the forum but whether defendant's contacts with the forum are of such a "quality and nature" that they manifest a "deliberate and voluntary" association with the forum and are not a result of a random, fortuitous, or attenuated contact or by the unilateral activity of another party or third person. *Id.* (*citing Mouzavires, supra*, 434 A.2d at 995, 997). As such, even a single act can be sufficient to support an assertion of personal jurisdiction. *See McGee, supra*, 355 U.S. at 223, 78 S. Ct. 199 (citations omitted). It is the relationship among the defendant, the forum and the litigation that is central to an inquiry regarding personal jurisdiction. *Mouzavires, supra*, 434 A.2d at 995 (*citing Shaffer v. Heitner*, 433 U.S. 186, 204, 97 S. Ct. 2569, 2580, 53 L. Ed. 2d 683 (1977)).

With *International Shoe* and its progeny as guidance, courts here have found that fax and telephone communications with a plaintiff in the District of Columbia, even in the aggregate, do not manifest the deliberate and voluntary association with the District of Columbia that is necessary to invoke jurisdiction. *COMSAT, supra*, 900 F. Supp. at 520 (construing D.C. Long-Arm Statute); *Bank of Cape Verde v. Bronson*, 869 F. Supp. 21 (D.D.C.1994); *Far West Capital, Inc. v. Towne*, 46 F.3d 1071, 1076-77 (10th Cir.1995)). In *COMSAT*, the defendant, an accounting authority licensed in Monaco, owed a sizable debt to the COMSAT Corporation maintaining its principle place of business in the District of Columbia. *See id.* at 518. Communications consisting of mail correspondence, facsimiles, and telephone calls transpired between plaintiff in the District of Columbia and defendant abroad in regard to this debt. *Id.* at 519. The court reasoned

that these limited communications did not satisfy the D.C. Long-Arm Statute because they did not evidence any desire by defendant to do any business in the District of Columbia. *Id.* at 522-523. In its findings, the court emphasized that "a plaintiff may not depend on its own activities to establish the existence of minimum contacts." *Id.* (citations omitted). Although defendant initiated some of these communications, a substantial connection was not established when surrounding circumstances required defendant to communicate to plaintiff. *Id.*

In regard to interstate contracts, courts here have held that the mere existence of a contract between a non-resident and a resident is not a sufficient basis on which to claim jurisdiction over the non-resident in the District of Columbia. *Id.* (citing *Hanson, supra*, 357 U.S. at 253, 78 S. Ct.1228; *Willis v. Willis*, 655 F.2d 1333, 1338, 211 U.S. App. D.C. 103 (1981). The court must consider the terms of the alleged contract and whether the contract obligates the defendant to provide services in the District of Columbia. *See id.; see also Bueno v. La Compania Peruana de Radiodifusion*, 375 A.2d 6 (D.C.1977) (finding no minimum contacts when neither performance nor services were to be provided in D.C.). Most important in any personal jurisdiction inquiry is the qualitative rather than the quantitative nature of defendant's contacts. *See Schwartz v. CDI Japan, Ltd.*, 938 F. Supp.1, 4 (D.D.C.1996) (citing *Mouzavires* 434 A.2d at 988). For the *Schwartz* court, "prior negotiations and contemplated future consequences [6], along with the terms of the contract and the parties actual course of dealing" were relevant to its determination that personal jurisdiction existed. *Id.* at 6 (quoting *Burger King, supra*, 471 U.S. at 477-81, 105 S. Ct. 2174).

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[6] "Contemplated future consequences" in Schwartz dealt with defendant's intent to pursue other future business projects with the same parties in D.C. *See Schwartz, supra*, 938 F. Supp. at 6.

D. Analysis

1. General Jurisdiction

In her brief, plaintiff cites D.C. Code section 13-334 and asserts that defendant's continuing presence in the District of Columbia, designed to further its corporate interest, is sufficient to establish general jurisdiction over Dorado Reef. *See* Pl.'s Personal Jurisdiction Br. at 37. Besides the blanket use of the statute's language, plaintiff fails to proffer further evidence to support general jurisdiction. Rather, she relies solely on the D.C. Long-Arm Statute throughout her Second Amended Complaint and personal jurisdiction brief. See 2d Am. Compl. ¶¶ 4-5. The D.C. Long-Arm Statute, however, confers specific jurisdiction, not general jurisdiction. *See Schwartz, supra*, 938 F. Supp. at 4. Even so, this court concludes that defendant's activity fails to rise to the level required for general jurisdiction in D.C. Code section 13-334. *See El Fadl v. Central Bank of Jordan*, 75 F.3d 668 (D.C. Cir.1996) (stating a court may exercise its discretional power to consider personal jurisdiction even when not pleaded).

Plaintiff claims that interstate communications regarding renegotiation of a subject contract provision, defendant's threat to sue for an unpaid debt, and the alleged financial harm caused to Ms. Irons in the District of Columbia, in the aggregate, rise to the level of "continuous and systematic" contacts needed for general jurisdiction. Gleaning from plaintiff s allegations and affidavits, the court interprets all of these acts as occurring intermittently throughout the parties' relationship, which began in 1989. Plaintiff has cited activity that amounts to a handful of phone calls, facsimiles and mail correspondence relating to either a debt collection or a renegotiation. While it is uncontested that communications occurred between plaintiff in the District of Columbia and defendant in Puerto Rico, the level of activity related to D.C. cannot be considered substantial enough to constitute a

"continuous and systematic" presence placing defendant under the general jurisdictional reach of this court for any and all claims against it.

2. Specific Jurisdiction

With respect to whether these contacts meet the lower standard necessary to satisfy specific jurisdiction, the court finds that the nature of defendant's activity fails to rise to the level of a sporadic or single act having the quality or significance to allow plaintiff to maintain this action in this jurisdiction. The history of the contractual relationship between these parties[7] consists of three agreements. The relationship commenced with the 1989 sale of land to the defendant. In 1993 the parties agreed to place restrictive covenants on plaintiff's remaining parcel; later they amended the 1993 agreement. It is only the 1993 agreement that can form the crux of plaintiff's action. That agreement was negotiated and acceded to in the Commonwealth of Puerto Rico in front of a public notary. In short, the agreement served defendant by granting it, among other things, the right of first refusal and by placing qualified restrictive covenants upon the land. The plaintiff benefited by becoming a member of the homeowners association.

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[7] Plaintiff in a footnoted section of her Personal Jurisdiction Brief makes the distinction between defendant as a partnership and a corporation arguing that they are not the same party. *See* Pl.'s Personal Jurisdiction Br. at n.6. To hold such would lead to the elimination of a contract that is central to plaintiff's personal jurisdiction claim and further dilute defendant's already tenuous contacts. The court will not entertain this argument because plaintiff does not contend that the restrictive covenant agreement is unenforceable due to defendant not being a party to the contract. In fact, plaintiff relies heavily on this agreement, bringing suit on the grounds that Dorado Reef as a corporation breached its duty as a homeowners association to supply services provided in this same agreement. *See* 2d Am. Compl. ¶ 4 1.

In the eyes of this court, save the minimal interstate communications, the original contract for the sale of land and subsequent agreements have nothing to do with the District of Columbia. Unlike *Schwartz, supra*, no services were to be provided in the District nor is there any indication that future consequences were contemplated relating to this forum, such as a choice of law or venue provision. In the instant case, defendant lacks any independent relationship with the District. Defendant Dorado Reef is a business incorporated solely in Puerto Rico. Defendant does not maintain any offices in the District of Columbia, has no agents here, nor did it solicit business in the District. The contractual relationship established between the parties exclusively commenced in Puerto Rico in 1989 with the sale of land to defendant. All later agreements stemmed from this original agreement.

The court cannot conclude that attempts to collect a debt constitute "a substantial connection" with this forum. According to plaintiff, these communications began in 1995 shortly after defendant's incorporation and have continued since. However, these contacts cannot be interpreted as a "deliberate and voluntary" reaching out by defendant from its domiciliary borders. At most, the alleged conduct represents a drawing out of defendant from its borders, compelled by plaintiff's own conduct. Similar to the defendant in *COMSAT, supra*, Dorado Reef unwillingly reached into this forum as a result of a unilateral act by plaintiff, mainly the nonpayment of maintenance fees. By pursuing plaintiff in the District through various communicative efforts, defendant did not purposefully avail itself of the privilege of conducting business in the District such that they would expect to be sued in D. C. Superior Court. To the contrary, these efforts were reasonably designed to avoid litigation altogether.

Although the court pauses when considering the renegotiation of a provision in the 1993 agreement, this proactive

move by defendant pertained to a contract already existing in Puerto Rico, not some new commercial relationship the defendant sought to establish. While negotiating an original contract may meet the minimum contacts test, to hold that a renegotiation of an entirely Puerto Rico-centered contract justifies personal jurisdiction would likely create a chilling effect. Persons similarly situated to the defendant might be apprehensive about communicating with a foreign party in regard to altering an already existing contract for fear of triggering personal jurisdiction. Notwithstanding this policy argument, the court finds the quality and nature of these contacts fail to reach the level of minimum contacts required by Due Process and are far too attenuated to support jurisdiction over defendant in this court. The exercise personal jurisdiction over this defendant would violate defendant's right to Due Process and run afoul of the Fifth Amendment.

Accordingly, it is by the Court this day 22nd of September, 2000.

ORDERED that defendant's motion to dismiss is granted and this action is dismissed with prejudice.

/s/ Gregory Mize
GREGORY MIZE
Judge
SIGNED IN CHAMBERS

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SUPERIOR COURT Of THE DISTRICT OF COLUMBIA
CIVIL DIVISION

C.A. No. 99-24
Calendar 10
Judge Mize

MARY L. IRONS,

Plaintiff,

v.

ASOCIACION DE PROPIETARIOS LA URBANIZACION DORADO REEF, INC.,

Defendant.

ORDER
(December 14, 1999)

The Court has before it numerous motions filed by the parties, particularly the Plaintiff. Putting aside the legal sparring between the parties, the central issue is whether or not this Court has jurisdiction over the Defendant.

The essence of Plaintiff s position is that she has jurisdiction over the Defendant in connection with the initial complaint and through her intended amendments adding a tortious interference count. From Plaintiff's perspective, Defendant has yet to file a viable motion to dismiss, but she asserts that she is, in any event, entitled to discovery on the jurisdictional issue before the Court rules.

The Court agrees with Plaintiff that she is entitled to discovery, albeit limited, on the jurisdictional issues and on

jurisdictional issues only.[1] In this context, it makes no sense to deny the Plaintiff's request to amend the complaint. Rather, the most pragmatic way to bring this lawsuit into focus and back on track is to permit the filing of Defendants Motion to Dismiss, by counsel, lest there be any question and then permit discovery on jurisdictional issues with additional briefing thereafter on these limited issues.

Thus, the Court will permit the filing of an amended complaint and then permit discovery on jurisdictional issues only. This does not mean discovery on the bases for any purported defenses of the Defendant; the discovery is limited to the issue of whether or not the Defendant is subject to suit in the District of Columbia. Following the completion of such discovery, Defendant may supplement its Motion.[2] Plaintiff may file a new Opposition and Defendant may file a Reply.

Accordingly, it is this 14th day of December, 1999:

ORDERED that Plaintiff's Motion for Leave to Amend First Amended Complaint and for Denial without Prejudice of all Pending Motions as Moot is GRANTED; and it is

FURTHER ORDERED that the Second Amended Complaint is deemed filed; and it is

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[1] In pursuing this course, the Court chooses not to treat Plaintiff's Motion for Summary Judgment, *inter alia*, on jurisdictional grounds as a de facto acknowledgment that no discovery is needed on the jurisdictional issues. To do so, would interject an unnecessary issue into the dispute.

[2] For purposes of discovery and to avoid the necessity of filing an amended motion to dismiss dealing with the tortious interference claim at this time, the supplemental motion contemplated by this Order may present any jurisdictional arguments with respect to the tortious interference claim and Plaintiff s Opposition may then deal with all of Defendant's arguments.

FURTHER ORDERED that Defendant need not answer or otherwise respond to the Second Amended Complaint pending further Order of the Court [3]; and it is

FURTHER ORDERED that Defendant's Motion for Leave of Court to Resubmit Motion to Dismiss for Lack of Jurisdiction. filed July 8, 1999, is GRANTED; and it is

FURTHER ORDERED that each party may have until December 29, 1999 in which to serve any requests for discovery on the issue of jurisdiction; and it is

FURTHER ORDERED that the parties shall have until January 31, 2000 in which to complete all discovery on jurisdiction; and it is

FURTHER ORDERED that Defendant shall have until February 18, 2000 in which to supplement its Motion to Dismiss; and it is

FURTHER ORDERED that Plaintiff shall have until March 10, 2000 in which to respond; and it is

FURTHER ORDERED that Defendant shall have until March 22, 2000 in which to file any reply; and it is

FURTHER ORDERED that Plaintiff's Motion to Reconsider Denial and to Grant Forthwith "Plaintiff's Motion for Entry of Default and Judgment (First Amended Complaint)", filed May 3, 1999, is DENIED; and it is

FURTHER ORDERED that Plaintiff's Urgent Motion (1) to Dismiss Defendant's "Motion to Dismiss for Lack of Jurisdiction" for Violation of Super. Ct. Civ. R. 101(a)(1) and (2) and (2) to Vacate Each and Ever Order Predicated on the Purported "Motion to Dismiss", filed May 3, 1999, is DENIED; and it is

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3 If the Court denies Defendant's arguments for dismissal on jurisdictional grounds, the Court will set a specific time within which to answer the Second Amended Complaint.

FURTHER ORDERED that Plaintiff's Motion to Vacate April 22, 1999 "Order", filed May 7, 1999, is DENIED; and it is

FURTHER ORDERED that Plaintiff's Motion for Sanctions under Super. Ct. Civ. R. 11, filed July 26, 1999, is DENIED; and it is

FURTHER ORDERED that Plaintiff's Request for Immediate Grant of Unopposed Plaintiff's Urgent Motion, filed July 27, 1999, is DENIED; and it is

FURTHER ORDERED that Plaintiff's Motion to Resubmit "Motion Pursuant to Rule 37(d)" and for Entry of Proposed Order, filed July 27, 1999, is DENIED; and it is

FURTHER ORDERED that Plaintiff's Motion for Leave to File Second Amended Complaint is WITHDRAWN without prejudice per praecipe, filed September 10, 1999; and it is

FURTHER ORDERED that Plaintiff's Motion for Summary judgment is DENIED WITHOUT PREJUDICE.

/s/ Richard A. Levie
RICHARD A. LEVIE for Judge Mize
Associate Judge
Signed in Chambers

Copies faxed and mailed to:

David W Brown. Esq.

Michael E. Veve. Esq.

DISTRICT OF COLUMBIA COURT OF APPEALS

Appeal No. 01-CV-436

MARY L. IRONS,
Plaintiff-Appellant,

v.

ASOCIACION DE PROPIETARIOS DE LA
URBANIZATION DORADO REEF, INC.
Defendant-Appellee.

APPEAL FROM THE
SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION
CIVIL ACTION NO. 0000024-99(GEM)

APPELLANT'S PETITION FOR REHEARING

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APPELLANT'S PETITION FOR REHEARING

This Petition for Rehearing of the April 10, 2002 Opinion and Judgment sets forth points of law or fact apparently overlooked or misapprehended by the Court. Petitioner asks that the said Opinion and Judgment be vacated, that a new and corrected Opinion be filed, and that a new Judgment that denies the Motion to Dismiss be entered.

1. *The dismissal order (R334) violates due process because the trial court refused to provide plaintiff with an opportunity to demonstrate personal jurisdiction, and then ruled that "plaintiff failed to demonstrate personal jurisdiction under any standard". According to the Opinion, this Court "agree[s]".*

The dismissal order says: "In the instant case . . . a hearing was held on June 30, 2000 to give the parties an opportunity to supplement the record" (R338). *No such purpose was timely communicated to plaintiff until after the Rule 59(e) motion (R346) demonstrated that the order was void for failure of the trial court to conduct an evidentiary hearing.* Nevertheless, the March 19, 2001 order (*rejecting appellant's contention* "that the June 30, 2000 hearing before the court was merely a 'status conference' and that *the parties were not provided with advance notice that they would have the opportunity to supplement the record*"(R361)) states: "The argument is without merit. First, the fact that the hearing was noticed as a 'status conference' *does not change the fact*[1] that the hearing provided the parties with an opportunity to supplement the record" (R361-2; emphasis added). It is

---

[1] The Opinion apparently *overlooks* the error in this "fact" finding. The error is explicated in the Brief for Appellant, pp. 26-29 ("the clear error in the dismissal order is that the 'hearing' *was not noticed as an evidentiary hearing* which would 'provid[e] the parties with an opportunity to supplement the record' " (App.Br. 27, original emphasis)). The March 19, 2001 order (R361) tacitly agrees.

solely on the basis of that "fact" that the March 19, 2001 order goes on to state that "plaintiff failed to demonstrate personal jurisdiction under any standard of review" (R362).

Because the trial court refused to provide appellant any opportunity to supplement the record and thus demonstrate "personal jurisdiction under any standard", the April 10, 2002 Opinion and Judgment and the dismissal order should be vacated.

II. *The Opinion "overlooks" the demonstration of clear personal jurisdiction set forth in the unopposed Motion for Summary Reversal ("Part II" of which "is incorporated herein by reference and is relied upon in support of the Appellant's Brief" : App.Br. 39).*

The unopposed Motion for Summary Reversal demonstrates that the dismissal order's "due process" ruling clashes with the decisions in *Burger King v. Rudzewicz*, 471 U.S. 462 (1985) and *McGee v. International Life Ins. Co.*, 355 U.S. 220, 223 (1957).

A. According to the Motion for Summary Reversal at pages 11-13:

> (c) on July 19, 1993, Dorado Reef, S.E. and Sanchez[2]
>
> (i) caused the defendant to be incorporated; and
>
> (ii) concurrently imposed restrictive covenants on the entirety of the Dorado Reef housing development.

However, Dorado Reef S.E. and Sanchez *could not and did not* impose any restrictive covenants upon the *excluded Irons parcel* which remained the private property of Irons.

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[2] Sanchez, at relevant times, was the Chief Executive Officer and directly managed the affairs of Dorado Reef, S.E. and appellee APUDRI.

The Second Amended Complaint (Ex. 7) and Irons' Personal Jurisdiction Brief (Ex. 6) also show that *the exclusion of only the Irons' parcel from the restrictive covenants created an important problem for Dorado Reef, S.E. and its developer Sanchez. . . .*

To address that problem, in June of 1993 Sanchez, for and on behalf of Dorado Reef, S.E. and of defendant, reached out of Puerto Rico to do business with Irons in Washington, D.C.

As stated in the "Personal Jurisdiction Brief":

> 6. The December 7, 1993 Agreement [3] (Chevere Ex. 8), which is the sole basis for the defendant's maintenance fee claim against plaintiff, *was the result of negotiations instituted in June of 1993 by Sanchez (Dorado Reef) from Puerto Rico with Irons in the District of Columbia . . . to induce plaintiff to agree to the imposition of the said restrictive covenants* on the [excluded] Irons property. . . . (Ex. 6, p. 19; emphasis added.)

As regards the "restrictive covenant" negotiations, the "Personal Jurisdiction Brief" explains:

> [B]efore the December 7, 1993 Agreement was executed, a plurality of telephone discussions relating to "restrictive covenants" occurred for months between Sanchez in Puerto Rico and Irons in Washington, D.C. *Sanchez, who then owned an apartment in Washington, D.C., also conferred personally with Irons in Washington, D.C. on at least one occasion during the June 1993 to December 1993 time period.* (Ex. 6, pp. 21-22; footnote omitted; emphasis added.) [4]

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[3] As stated in the dismissal order: "In 1993 the parties agreed. . . . It is only the *1993 agreement* that can form the crux of plaintiff's action" (R344).

[4] Shortly stated, each of the statements in Part II of the Opinion that "the facts do not reveal transaction of any business in the District of

In summary, to procure the December 7, 1993 Agreement, Sanchez, for and on behalf of Dorado Reef, S.E. and the defendant corporation, purposefully *reached out of Puerto Rico and into Washington, D.C.* to transact the restrictive covenant negotiation business of Dorado Reef and the defendant corporation with Irons in Washington, D.C. . . .[5]

B. Under the law as set forth in *Burger King v. Rudzewicz*, 471 U.S. 462 (1985) and *McGee v. International Life Ins. Co.*, 355 U.S. 220 (1957), the 1993 agreement and related communications establish at least a *prima facie* demonstration that the exercise of personal jurisdiction would not violate due process.[6]

"It is sufficient for the purposes of due process that the suit was based on a contract [the 1993 agreement] which had substantial connection with that State [the District of Columbia]. . . . It cannot be denied that California has a *manifest interest* in providing effective means of redress for its residents."[7] *McGee*, *supra*, 355 U.S. at 224; emphasis added.

Columbia" and that "Appellee APUDRI has not 'purposefully avail[ed]' itself of the privilege of conducting business in the District" (Op. 3) is *wrong*.

[5] As the Brief for Appellant explains at pp. 39, *et seq.*, the Motion for Summary Reversal at pages 10-11 (which it "incorporate[s] . . . by reference") actually demonstrates "*four*" separate "purposefully reaching out" episodes which are said certainly to establish *prima facie* personal jurisdiction.

[6] "*Prima facie* case means not only that the evidence of a proponent would reasonably allow the desired conclusion but also that it compels such a conclusion [absent rebuttal]." *Black's Law Dictionary* p. 1071 (5th Ed. 1979).

[7] All contrary to the statement in part II of the Opinion that "The District has no 'manifest interest'" (Op. 3).

The Opinion states—without any annotation to the record: "Indeed, the only reason that APUDRI communicated at all with appellant in the District was because appellant lived there at the time the dispute over

Burger King states: "So long as it creates a 'substantial connection' with the forum, even a single act [Sanchez' trip from San Juan, Puerto Rico for consultation with appellant in the District of Columbia to negotiate the 1993 agreement] can support jurisdiction." 471 U.S. at 476, n. 18, citing *McGee*, 355 U.S. at 223.

"Jurisdiction is proper, however, where the contacts proximately result from actions by the defendant himself [Sanchez, APUDRI CEO] that create a 'substantial connection' [the 1993 Agreement] with the forum State." *Burger King*, 471 U.S. at 476, citing *McGee*, 355 U.S. at 223.

And, with respect to contractual obligations, we have emphasized that parties who "reach out beyond one state and create continuing relationships and obligations with citizens of another state" are subject to regulation and sanctions in the other state for the consequences of their actions. *Travelers Health Assn. v. Virginia*, 339 U.S. 643, 647 (1950). *See also*, *McGee*, 355 U.S. at 223.

"We cannot conclude that Florida has no 'legitimate interest in holding [Rudzewicz] answerable on a claim related to' the contacts he had established in that State. *Keeton v. Hustler Magazine, Inc.*, 465 U.S. at 776; see also *McGee* . . . 355 U.S. at 223 (noting that State frequently will have a 'manifest interest in providing effective means of redress for its residents'). . . ." *Burger King, supra*, 471 U.S. at 483-484.

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maintenance fees arose" (Op. 3). It is requested that this statement, which appellant disputes, be deleted from the Opinion. It does not appear that the Superior Court made any such finding. *Per contra*, appellee APUDRI reached out of Puerto Rico to make the 1993 agreement with appellant Irons in Washington. APUDRI's subsequent communications with appellant in the District were a predictable consequence of that "reaching out". This Petition asks this Court to correct these errors of fact and to base a *de novo* ruling on correct facts.

Under *McGee* and *Burger King*, Sanchez' trip to and consultation with Irons in Washington, D. C. require reversal of the dismissal order which holds that due process precludes personal jurisdiction.

If the panel for any reason rejects the showing of personal jurisdiction made in the Motion for Summary Reversal, then due process requires remand with instructions to provide appellant with the heretofore denied opportunity to supplement the record.

III. *As regards appellant's Motion to Strike (R198), the Opinion says that "the procedural deficiencies complained of by appellant were likewise corrected by APUDRI and that the motion to strike was not warranted" (Op. 4). The Opinion apparently overlooks the undisputed facts set forth in note 20, page 32 of Appellant's Brief. To put the matter in context, the Superior Court's March 19, 2001 order, note 1 (R362) states, in part*:

> [1] . . . The affidavit complained of *was not* part of the subsequent motion to dismiss.[20]

---

[20] The Court's statement in note 1 of the March 19, 2001 Order that "[t]he affidavit complained of was not part of the subsequent motion to dismiss" is simply wrong. . . . There was and is no "*subsequent* motion to dismiss". The "original" motion to dismiss was simply *resubmitted without change*. . . .

Because the Superior Court's "not part of the subsequent motion to dismiss" statement is clear error, the *denial* of the Motion to Strike (R316) should be reversed.

IV. *As regards the Motion for Sanctions (R326) (under Rule 11 and the inherent power of the Court), the Superior Court's March 19, 2001 order notes "plaintiff contends that sanctions are proper because . . . defendant corporation originally filed [on January 8, 1999] its motion to dismiss*

proceeding pro se", but that that defect was "cured" (R362) by the filing of an appearance by a member of the D.C. bar on May 6, 1999 (R147).

The Opinion *overlooks* the fact that the essence of the sanctions motion is *not merely* the fact that the defendant corporation's motion to dismiss was improperly filed *pro se*, but *also* the fact that there was an *absence* of any pre-filing "reasonable inquiry" (Rule 11(b)) and that the filing was for the "*improper purpose*" of avoiding the retention of a member of the District of Columbia Bar as required by this Court's rules and for the improper purpose of "caus[ing] unnecessary delay or needless expense in the cost of the litigation" (Rule 11(b)(1)). *See* the Motion for Sanctions, Part I, pp. 9-12 (R225-228) (counsel who ghostwrote and filed (see App.Br. 8) the *pro se* Motion to Dismiss knew, *at the time*, that in Puerto Rico, as elsewhere, *pro se* appearances by a corporation are barred). The disappointing degree to which these improper purposes of the *pro se* complaint were achieved is demonstrated by "lengthy and compli cated proceedings" mentioned at page 2 of the Opinion, including note 1.

Rule 11(c) authorizes payment to movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation. The object of Rule 11 is the deterrence of improper litigation conduct in pleadings and motions. *See Pickholtz v. Rainbow Technologies, Inc.* (Fed. Cir.), slip op. of 4/11/02 citing *Massengale v. Ray*, 267 F.3d 1298 (Fed. Cir. 2001). That object is defeated until and unless appellant is awarded attorneys' fees and expenses incurred prior to the time—some four months after the Complaint (R18) was filed—that APUDRI "corrected" the *pro se* deficiency by the appearance of a member of the D. C. Bar (R147).

V. *The Opinion "overlooks" (is silent with respect to) "Conclusion" "(f)" of Appellant's Brief that requests an order that*

> (f) remands this case to the Superior Court for a ruling on the issues of whether the filing by the defendant corporation of the unworthy *pro se* Motion to Dismiss as ghostwritten by the defendant corporation's Puerto Rico counsel, Jose De La Cruz Skerrett, for verification by the defendant corporation's President, Diego Chevere, all without notice to the Superior Court, violated Fed.R.Civ.P. 11 and Rules of Professional Conduct 3.3 and 8.4(c) and (d), and, if so, for the imposition of sanctions including an award of attorneys' fees and expenses to Irons; (p. 42)

A negative answer to this question would conflict with *Duran v. Carris*, 238 F.3d 1268, 1271-1272 (10 Cir. 2001). *See* App.Br. 34.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was mailed, postage prepaid, this 22nd day of April, 2002, to Michael E. Veve, Esquire, Attorney for Defendant-Appellee, 2121 K Street, N.W., Suite 800, Washington, D. C. 20037.

/s/ Edward S. Irons
EDWARD S. IRONS

IN THE SUPERIOR COURT
OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

Civil Action No. 0000024-99-GEM

MARY L. IRONS,

Plaintiff,

v.

ASOCIACION DE PROPIETARIOS DE LA
URBANIZACION DORADO REEF, INC.,

Defendant.

PLAINTIFF'S MOTION FOR SANCTIONS

Plaintiff invokes Super.Ct.Civ.R. 11, 28 U.S.C. § 1927, and the inherent power of the Court to move for an order which:

> (i) imposes sanctions on the defendant, jointly and severally, on each member of its Board of Directors, each of its president Diego Chevere personally, and its counsel Jose E. De La Cruz Skerrett personally, and Martha Lissette Martinez Rodriguez personally; said sanctions to include denial of defendant's Motion to Dismiss for Lack of Jurisdiction (submitted in February 1999, refiled in March 1999 and resubmitted pursuant to the December 14, 1999 order); and
>
> (ii) an award to plaintiff of attorneys' fees and other expenses incurred as a direct result of the Motion to Dismiss for Lack of Jurisdiction signed and filed by Diego Chevere.

The imposition of sanctions upon Chevere, De La Cruz Skerrett and Martinez Rodriguez is necessary and appropriate

because defendant is a not-for-profit corporation precluded from borrowing any funds or mortgaging its properties whose directors, officers, members and incorporators have no liability for corporate debts.[1]

* * *

IDENTIFICATION OF PERSONS

Diego Chevere

Diego Chevere (Chevere), a certified public accountant, is now and has been the *sole* president of the defendant corporation. *See* Chevere 1/18/00 Deposition Tr. 15, ll. 5-10; Tr. 25, ll. 19-24.

Chevere Exhibit 5 (curriculum vitae), under the heading "Experience Highlights" states: "Testifying at trial and through deposition as an expert witness".

Mr. Chevere was aware of his professional and ethical responsibilities to tell the truth at the time he verified defendant's Motion to Dismiss on February 2, 1999 and at the time he testified on January 18 and 21, 2000 in his deposition taken in this case.

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[1] The Articles of Incorporation (Appendix A to the Motion to Dismiss; Chevere Ex. 3) state:

> Article 2. *Purposes and Powers.* The Corporation does not contemplate pecuniary gain or profit, direct or indirect, to its members. . . . [p. 1]
>
> * * *
>
> Article 11. *Loans, Mortgages and Pledges.* The Corporation shall not have power to borrow funds or to mortgage or pledge its properties. [p. 5]
>
> * * *
>
> Article 18. *Personal Liability.* The private property of the directors, officers, members and incorporators of the Corporation shall not be subject to the payment of corporate debts or obligations to any extent whatever.

Jose E. De La Cruz Skerrett

Mr. Skerrett has been counsel for the defendant "certainly for the last two or three years" (Chevere 1/21/00 Tr. 25, ll. 19-23). He is co-counsel (with Michael Veve) in this case.

Mr. Skerrett testified:

Q Please state your name?
A Jose E. De La Cruz Skerrett.
Q You're a lawyer, is that correct?
A Yes.
Q Before what courts are you admitted to practice?
A Puerto Rico and the United States District Court and the Court of Appeals for the First Circuit.
Q How long have you been engaged in the practice of law?
A Twenty-six years. [Tr. 6, ll. 8-19]

Mr. Skerrett prepared the Motion to Dismiss and submitted it to Mr. Chevere, who swore to it without change.

Martha Lissette Martinez Rodriguez

Ms. Martinez Rodriguez is a notary and a lawyer employed by the Skerrett Law Offices. She is admitted to practice before the Puerto Rico Commonwealth Courts, the United States District Court for the District of Puerto Rico and the First Circuit Court of Appeals (Tr. 5, l. 18 to Tr. 6, l. 7).

Michael Veve (D.C. Bar No. 222679)

Pursuant to the April 22, 1999 Order, page 2, n. 4, Mr. Veve filed a general appearance as "co-counsel" for the defendant on May 6, 1999. In the July 8, 1999 "Motion for Leave to Resubmit", Mr. Veve states that he "hereby fully ratifies, endorses and signs [the Motion to Dismiss] on behalf of the Defendant".

SANCTIONING AUTHORITY RELIED UPON

Defendant's legal counsel Skerrett prepared the Motion to Dismiss and submitted it to Chevere for his signature and verification. Chevere swore to the Motion to Dismiss as submitted and without change before Notary Public Martinez Rodriguez, a lawyer who is an associate of Skerrett. On May 6, 1999, Veve filed a general appearance for defendant, and then represented to the Court that he "signs" and "ratifies" the Motion to Dismiss. He has never physically signed it.

* * *

SPECIFIC VIOLATIONS

1. *Preamble of the Motion to Dismiss—*

The preamble to the Motion to Dismiss states:

> COMES NOW, Defendant party *pro se*, and *without submitting to the jurisdiction* of this Honorable Court, and very respectfully States and Prays: [p. 1, emphasis in original]

Mr. Skerrett, who prepared the Motion to Dismiss, and Notary Martinez Rodriguez, before whom it was sworn, *both knew at the time* that *Puerto Rico law precludes pro se* appearance by a corporation. Mr. Skerrett testified:

Q Mr. De La Cruz, are corporations permitted to appear pro se iñ Puerto Rico?

* * *

THE DEPONENT: No, they're not.

BY MR. IRONS:

Q And you have known that for some time then?

A I have known that for some time. I don't know if the law in Washington. I know the law in Puerto Rico.

Q So you know corporations may not appear pro se in Puerto Rico?

A In Puerto Rico, that's the only way I can testify about. I am not a practicing attorney in Washington and I don't know the rules of that—

Q I asked only about Puerto Rico.

A There is an opinion by the Supreme Court of Puerto Rico that the corporation should be represented by its lawyers.

Q I hand you a copy of a document which purports to be an opinion entitled, "Benito Munoz, Inc, the Productora Puertorriquena De Alimentos, Inc.". Is that the opinion to which you refer?

MR. VEVE: What's the citation?

MR. HILL: 109 BPR 825 of 1980.

THE DEPONENT:

This should be one of more than one opinion regarding the same issue.

BY MR. IRONS:

Q Would you please look at page number eighty-nine at the top of the opinion which has been handed to me? And the first complete paragraph there begins with the spanish words, "E-n r-e-s-u-m-e-n". Is that the law—a statement of the law as you understand it?

A Excuse me. May you restate the question?

Q I say, is that a correct statement of the law in Puerto Rico as you understand it?

A Yes, yes.

Q And that was true throughout 1999, mainly that you knew that to be the law?

A To my knowledge, it has made no change. [Tr. 37, l. 9 to Tr. 39, l. 7]

Martinez-Rodriguez, the Notary and attorney who verified the Motion to Dismiss, testified:

Q Do you know whether it is the method in Puerto Rico for a corporation to appear pro se?

A In certain cases, yes. In certain procedures, yes.

Q In what procedures?

A At least in administrative procedures you can do that. And some people in Puerto Rico think that it is not possible and under the Consumer of Department Affairs, a corporation can appear pro se.

Q What are the reasons that will permit a corporation to appear pro se in Puerto Rico?

A Well, I'm telling you under the Consumer of Department Affairs you can appear, you don't have to contract an attorney. Why they do that, I don't know.

Q Is that the only exception?

A That's the only one I know. [Tr. 27, ll. 2-17]

Mr. Skerrett testified that he has practiced law for 26 years and that he practices before the courts of Puerto Rico, including the United States District Court for the District of Puerto Rico and the First Circuit Court of Appeals [Tr. 6, ll. 10-18].

Had Mr. Skerrett discharged his duty under Rule 11(b) to make an "inquiry reasonable" under the circumstances, he would have learned that *pro se* appearance is barred in this Court, as he knew it to be in Puerto Rico. The same is true of attorney-notary Martinez Rodriguez, who verified the Motion to Dismiss.

The improper purposes of the unlawful *pro se* filing were to avoid retaining a member of the D.C. bar and to "cause unnecessary delay or needless expense in the cost of the litigation" (Rule 11(b)(1)).

For these reasons, the January 21, 2000 Order may, perhaps unwittingly, condone a clear violation not only of Rule 101(a)(2) but also of Rule 11.

2. *Paragraph 1 of the Motion to Dismiss:*

Paragraph 1 of the Motion to Dismiss avers:

> 1. On January 4, 1999, Plaintiff's husband, Edward S. Irons, filed a complaint on her behalf, for alleged damages arising from defendant's efforts to collect maintenance fees owed by plaintiff and her husband regarding their property located in Dorado, Puerto Rico. [p. 1]

However, each of Skerrett (who prepared it), Chevere (who signed it), and notary Martinez Rodriguez (who verified it) *knew* at the time the Motion was signed on February 2, 1999 that the question of whether "maintenance fees" were "owed" by plaintiff was in dispute. In other words, the quoted paragraph 1 was *not* "true in every respect" as Chevere swore.

* * *

Mr. Skerrett testified:

Q Referring to that paragraph one [of the Motion to Dismiss] which I have read the fees were quote "allegedly owed", isn't that true?

A I don't understand your question.

Q All right. The document says—says, "maintenance fees owed" quote-unquote. Whether or not those fees were owed was in dispute at that time?

A There was a dispute concerning those fees, yes.

Q At that time?

A Yes, at that time.

Q Do you deny that the statement in the Motion to Dismiss For Lack of Jurisdiction paragraph number one and so much thereof as reads, quote "collect maintenance fees owed by plaintiff" is misleading because it does not make any reference to the fact that whether or not the fees were owed was in dispute?

A *It is not misleading because there was a legal opinion already rendered and the maintenance fees were owed* in accordance to the association documents and legal opinion. And an effort was made—were being made at that time to collect the money from you and your wife after attempts to settle this matter with your previous counsel brought no results.

Q Now you referred to an opinion, is that the opinion about which you have testified?

A Yes.

Q To wit, De La Cruz Exhibit One?

A It was rendered on September four, 1998, yes. [Tr. 28, l. 17 to Tr. 29, l. 21; emphasis added.]

Mr. Chevere testified on January 18, 2000:

Q Is it your practice to read documents, or at least legal documents carefully before you sign them?

A Yes. [Tr. 8, ll. 21-23]

On January 21, 2000, Chevere testified:

Q All right. I want you to look at Exhibit Three again and in particular the Motion to Dismiss for Lack of Jurisdiction there is a part that says, "Affidavit Number Three Three Four".

Do you see that?

A Yes.

Q What oath was administered to you at the time you verified this document?

A That oath is comments and points that are detailed in this document are true and correct.

Q Did you—*did the oath which you swore to specify that you were telling the truth, the whole truth and nothing but the truth?*

A *Yes.*

Q Would you look at paragraph number one, page one which says "one: on January four, 1999, the plaintiff's husband, Edward S. Irons, filed a complaint on her behalf for alleged damages arising from *defendant's efforts to collect maintenance fees owed by plaintiff* and her husband regarding the property located in Dorado, Puerto Rico".

Do you see that, sir?

A Yes

Q Is that averment at all true?

A Yes.

* * *

BY MR. IRONS:

Q Do you deny that paragraph one is not the whole truth because it fails to set forth that portion of the truth which is that there was a controversy as to whether or not maintenance fees were quote "owed" unquote?

A What is stated on this paragraph is true and correct. The details of other controversies, I do not have—

Q Will you please answer the question, sir?

A This is the truth. Yes, it's true.

Q And it does not make any reference to the fact that a controversy regarding the payment of maintenance fees with the plaintiff was ongoing at the time you swore to this document, does it?

A This document is the truth. This document on this paragraph does not make any reference to any discrepancy or controversies.

Q And so it is not the whole truth because it fails to make reference to the controversy?

A We're talking about Article Number One on page one of the Motion to Dismiss for lack of Jurisdiction. That is true and correct.

Q But it is not the whole truth, is it?

A *I will not answer.* [Tr. 7, l. 11 to Tr. 9, l. 20; emphasis added.]

* * *

Q Referring again to paragraph one of the Motion to Dismiss for Lack of Jurisdiction, the averment to the collection of quote "maintenance fees owed" close quote, is incorrect isn't it?

A It is correct that statement on Article Olne[sic].

Q But the whole truth is that you simply have an opinion that those fees were owed, isn't that right?

A We had a legal opinion and it was the interpretation of the board of directors that those fees were owed.

Q And that is why you say paragraph one of the Motion to Dismiss for Lack of Jurisdiction is the whole truth?

A Yes. [Tr. 18, ll. 4-18]

Ms. Martinez Rodriguez testified:

Q . . . And you knew at the time you administered the oath to Mr. Chevere that there was a dispute about whether maintenance fees were in fact, owed by the plaintiff, did you not?

A Well, there was a dispute, yes.

Q And you knew at the time?

A Yes.

Q Do you deny that the statement in paragraph one of the Motion to Dismiss for Lack of Jurisdiction is misleading because it contains no reference to the dispute about the payment of maintenance fees?

A I can't tell you anything about the content of the document because as I told you before, when I verified this document I am not certifying the content of the document. I'm certifying that the affiant, Mr. Diego Chevere, signed before me.[5] [Tr. 20, l. 22 to Tr. 21, l. 13]

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[5] But the Martinez Rodriguez certification is invalid under Puerto Rico law and the "verified" Motion to Dismiss is null and void *ab initio* and should be stricken for the reasons fully set forth in the concurrently-filed Plaintiff's Motion to Strike.

3. *Paragraphs 2 and 7 of the Motion to Dismiss—*

Paragraph 2 avers that the defendant "certainly does not make any business in the State of Washington, D.C.". According to paragraph 7, it is "the fact that we made no business in said state".

The concurrently-filed "Plaintiff's Personal Jurisdiction Brief" and its exhibits demonstrate that, primarily through Mr. Chevere, the defendant was in fact transacting its business by communications exchanged with Irons in Washington, D.C. Mr. Chevere so testified on his deposition taken January 18, 1999. *See* Tr. 75, l. 11 (Ex. 20); Tr. 77, l. 12-Tr. 78, l. 9 (Ex. 21); Tr. 78, ll. 19-22 (Ex. 22); Tr. 79, ll. 9-16 (Ex. 23), and Tr. 80, l. 5-Tr. 81, l. 22 (Ex. 24). As to these exhibits, Mr. Chevere testified that each was a communication sent or received by defendant in the conduct of its business. It was then stipulated that the additional Chevere Exs. 25-58 were of the same kind; whereupon, those Exhibits 25-58 were marked by the reporter and made part of the record without further testimony. As to the stipulation, see the following:

MR. VEVE:

> Mr. Irons, we have reviewed all of the other unmarked correspondence that you have shown us and with the exception of three of them we can stipulate and Mr. Diego Chevere who is here can confirm that they are indeed faithful copies of various letters that have been crossed between the named parties in that correspondence or/or [sic] about the date of that correspondence.
>
> And if they can be marked as exhibits consecutively we can accept the legitimacy and the dates of these documents, and I'm going to turn them back over to you. . . . [Tr. 88, ll. 5-21]

* * *

MR. IRONS: So I will accept that stipulation and abstain from asking questions establishing that these documents were sent and received in the normal course of business to and by the parties indicated, etcetera. That will save time. [Tr. 92, ll. 5-12]

* * *

/s/ Edward S. Irons
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was hand-delivered, this 10th day of March, 2000, to Michael E. Veve, Esquire, attorney for defendant, Lasa, Monroig & Veve, 2121 K Street, N.W., Suite 800, Washington, D.C. 20037.

/s/ Edward S. Irons
EDWARD S. IRONS

IN THE SUPERIOR COURT
OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

Civil Action No. 0000024-99-GEM

MARY L. IRONS,

Plaintiff,

v.

ASOCIACION DE PROPIETARIOS DE
LA URBANIZACION DORADO REEF, INC.

Defendant.

PLAINTIFF'S MOTION TO STRIKE VERIFIED "MOTION TO DISMISS FOR LACK OF JURISDICTION"

Because it is null and void *ab initio* under the laws of Puerto Rico, where it was inappropriately verified by notary Martha Lissette Martinez Rodriguez ("Martinez Rodriguez") on February 2, 1999,[1] plaintiff moves to strike defendant's Motion to Dismiss for Lack of Jurisdiction ("Motion to Dismiss") and all orders which cite or rely upon it.

POINTS AND AUTHORITIES

This Motion must be granted because:

(i) The Motion to Dismiss was verified by Diego Chevere before Martinez Rodriguez, an attorney and a notary;

(ii) This litigation involves not only this District of Columbia case filed January 4, 1999 but also the reactive counterpart case (Civil Action DCD-99-0506(503)) filed

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[1] This Motion relies upon the record in this case, including the depositions and exhibits submitted with plaintiff's Personal Jurisdiction Brief.

in the Puerto Rico Superior Court on February 16, 1999 and now pending against plaintiff, which raises the same issues between the same parties.

(iii) Notary Martinez Rodriguez has functioned as counsel for defendant in both the District of Columbia and Puerto Rico counterpart cases.

(iv) Rule 5 of the Puerto Rico Notary Rules of 1995 provides:

> A notary is not able to represent as counsel for a client in contentious litigation and, at the same time, serve as notary in the same case because it is a possible conflict of interest or the incompatibilities that can result therefrom. [Informal translation; subject to correction]

(v) Under Puerto Rico law, a document for use in a case which is notarized in violation of Puerto Rico Notary Rule 5 may be stricken as null and void by the court. *See Bermudez & Longo v. Puerto Rico Casting Steel Corp.*, 114 D.P.R. 808, 811 (1983), striking an affidavit in which the notary was attorney for the plaintiff.

The reason an attorney is precluded from serving as a notary for the party he represents is because:

> There exists such a manifest identity between attorney and client with respect to the version of the facts over which a remedy is requested in the civil action and the attorney has so much liberty to choose the language to narrate the facts to him informed by the client, that in any action—in the development of the controversy—a discrepancy between the attorney and the client

> regarding the content of the sworn allegation can result and cause harmful proceedings against the public faith of which the notary is custodian.

Bermudez & Longo, supra, 114 D.P.R. at 811.[2]

Torres Peralta, Sarah, *El Derecho Notarial Puertorriqueno*, Edicion Especial 1995, Publicaciones STP, 1995 at 15.25 (Exhibit A in Spanish; Exhibit B in English) states, in part:

> The following are the reasons for total nullification *per se*, common to affidavits and testimonies:
>
> * * *
>
> 8. The authorization of an affidavit or testimony against the Supreme Court decision in *Bermudez & Longo v. Puerto Rico Casting Steel Corporation*, 114 D.P.R. 808 (1983). [Footnote omitted.]

Notary Martinez Rodriguez, who Notarized the Motion to Dismiss, is Participating as Defendant's Counsel in this Litigation

Ms. Martinez Rodriguez testified that she is employed by the law offices of De La Cruz Skerrett, defendant's counsel in the Puerto Rico case and co-counsel in Washington, D.C. (Tr. 6, ll. 7-8); that she is the notary who executed the verified Motion to Dismiss (Tr. 15, ll. 11-16); and that she is admitted to practice before the Commonwealth Court of Puerto Rico, the United States District Court for the District of Puerto Rico, and the United States Court of Appeals for the First Circuit (Tr. 3, ll. 18-25; Tr. 6, ll. 1-3). She has appeared as counsel for the defendant in the Puerto Rico component of

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[2] Attorneys in a firm or partnership may serve as notaries for the party being represented in a matter but only if "they do not intervene in the litigation or the prosecution of the matter". *Bermudez & Longo, supra*, at 813. *See also In re Luis Colon Ramery*, 95 J.T.S. 91, 95 CDT 96, 1995 WL 905989 (1995).

this litigation, both before the Puerto Rico Superior Court and, after removal, before the United States District Court for the District of Puerto Rico (Tr. 18, l. 20; Tr. 31, ll. 23-25; Tr. 32, l. 1). She has also and concurrently participated as counsel for the defendant in this Washington, D.C. case.

Notary Martinez Rodriguez timely knew of the jurisdictional issue which is common to this case and to its Puerto Rico counterpart, having reviewed the relevant files and discussed the matter with the other attorneys of the Skerrett firm (Tr. 12, ll. 3-5). In the removal case in Puerto Rico, Martinez Rodriguez *signed* an "Opposition to Defendant's Motion for Rule 11 Sanctions" having as an attachment a copy of a Motion for Sanctions filed in this Washington, D.C. case.

* * *

Section 15.30 of the text under the heading number 14 of the Torres Peralta treatise marked as Exhibit 3 on the deposition of Notary Martinez Rodriguez states:

> The Notary does not assume any responsibility for the content of the private document whose signature he witnesses. *Notwithstanding, it is essential to point out that when his notarial function is limited to subscribe and*
>
> *authenticate the signatures of the persons, this includes the duty in terms of professional responsibility and ethical dimension of examining in detail the document. If he perceives that the same is written, in its content, in disagreement with the law, ethics, or public welfare or public customs, it is his duty to refuse to legitimize the signatures of the persons. It cannot be any other way.* [Emphasis added.] (Translation subject to correction.)

Martinez Rodriguez' timely knowledge that Mr. Chevere's "Sworn Statement" verified on February 2, 1999 that the statements in the Motion to Dismiss were not "true in every

respect" is demonstrated by her then knowledge that the issue of whether "maintenance fees" were *in fact* "owed" as stated in paragraph 1 of the Motion to Dismiss was then in controversy between the parties:

Q Would you read—I will read it. I want to read paragraph one of the Motion to Dismiss for Lack of Jurisdiction. It ways, quote "One; on January four, 1999, plaintiff's husband Edward S. Irons filed a complaint on her behalf for alleged damages arising from defendant's efforts to collect maintenance fees owed by plaintiff and her husband regarding the property located in Dorado, Puerto Rico".

Do you see that?

A Yes, that what—

Q And do you—I'm sorry.

A That's what the first paragraph says, as it reads.

Q Yes. And you knew at the time you administered the oath to Mr. Chevere that there was a dispute about whether maintenance fees were in fact, owed by the plaintiff, did you not?

A Well, there was a dispute, yes.

Q And you knew at the time?

A Yes.

Q Do you deny that the statement in paragraph one of the Motion to Dismiss for Lack of Jurisdiction is misleading because it contains no reference to the dispute about the payment of maintenance fees?

A I can't tell you anything about the content of the document because as I told you before, when I verified this document I am not certifying the content of the document. I'm certifying that the affiant, Mr. Diego Chevere, signed before me.

Q I am not asking you what you certified.

A You're asking me about the content of the document. I can't tell you about the content of the document anything.

Q Well, you have already told me that at the time you swore Mr. Chevere to the document you knew there was a controversy about maintenance fees.

A I know there was a controversy, yes. [Tr. 20, l. 9 to Tr. 21, l. 21; emphasis added.]

By her own sworn testimony, notary Martinez Rodriguez has admitted that she failed to discharge her "duty in terms of professional responsibility and ethical dimension of examining in detail" the Motion to Dismiss and refusing "to legitimize" Mr. Chevere's signature because the content of the document was, in part, not true. *See* Section 15.30 of Torres Peralta treatise.

* * *

/s/ Edward S. Irons
EDWARD S. IRONS
D.C. Bar No. 149898
3945 - 52nd Street, N.W.
Washington, D. C. 20016
(202) 362-5332—phone
(202) 966-1338—fax

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was hand-delivered, this 10th day of March, 2000, to Michael E. Veve, Esquire, attorney for defendant, Lasa, Monroig & Veve, 2121 K Street, N.W., Suite 800, Washington, D.C. 20037.

/s/ Edward S. Irons
EDWARD S. IRONS

IN THE SUPERIOR COURT
FOR THE DISTRICT OF COLUMBIA
Civil Division

Civil No. 99-CA-0000024
Calendar 10 (Judge Mize)

MARY L. IRONS,

Plaintiff,

vs.

ASOCIACION DE PROPIETARIOS DE LA URBANIZACION DORADO REEF, INC.,

Defendant.

MOTION FOR LEAVE OF COURT TO RESUBMIT MOTION TO DISMISS FOR LACK OF JURISDICTION

COMES NOW Defendant Asociacion de Propietarios de la Urbanizacion Dorado Reef, Inc., through undersigned counsel and without submitting to the jurisdiction of this Honorable Court, respectfully states and prays as follows:

1. Defendant's original Motion to Dismiss for Lack of Jurisdiction was filed *pro se* without counsel in February, 1999, and re-filed in March, 1999.

2. In its Order dated April 22, 1999, in which the Court requested briefs from the parties regarding the pending jurisdictional question before the Court, the Court provided Defendant an opportunity to re-submit its Motion to Dismiss for Lack of Jurisdiction.

3. Defendant's undersigned counsel entered his formal appearance on May 6th 1999, and filed Defendant's jurisdictional brief on May 13th, 1999, without enclosing a resubmitted Motion to Dismiss for Lack of Jurisdiction duly endorsed by Defendant's counsel.

WHEREFORE, to correct this omission, Defendant respectfully requests leave from the Court to resubmit its original Motion to Dismiss for Lack of Jurisdiction (enclosed herein), which undersigned counsel for Defendant hereby fully ratifies, endorses, and signs on behalf of Defendant.

Date: July 8, 1999

/s/ Michael E. Veve
MICHAEL E. VEVE
D.C. Bar No. 222679
Lasa, Monroig & Veve
2121 KStreet,N.W.
Suite 800
Washington, D.C. 20037
Tel: (202)261-3524
FAX: (202)261 4523

Counsel for Defendant

Certificate of Service

I hereby certify on this 8th day of July, 1999, I mailed by first class, postage prepaid mail a copy of this Motion for Leave of Court to Resubmit Motion to Dismiss for Lack of Jurisdiction to Plaintiff's counsel at the following address:

Edward Irons, Esquire
700 13th Street, N.W.
Suite 950
Washington, D.C. 20005

/s/ Michael E. Veve
MICHAEL E. VEVE

IN THE SUPERIOR COURT
OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

Case No.: 09-CA-000024

Mary L. Burns, 3945 - 52nd. Street, N.W.,
Washington, D.C. 20016,

Plaintiff,

vs.

Asociacion de Propietarios de La
Urbanizacion Dorado Beach, Inc.,
Boulevard Mirasur, Dorado, Puerto Rico 00646,

Defendant.

CIVIL ACTION

MOTION TO DISMISS FOR LACK OF JURISDICTION

TO THE HONORABLE COURT:

COMES NOW, Defendant party *pro se*, and without *submitting to the jurisdiction of this Honorable Court*, and very respectfully States and Prays:

1. On January 6, 1999, Plaintiff's husband, Edward S. Burns, filed a complaint on her behalf, for alleged damages arising from defendant's efforts to collect maintenance fees owed by plaintiff and her husband regarding their property located in Dorado, Puerto Rico.

2. Contrary to what plaintiff alleges in the Complaint, this Court lacks jurisdiction over the appearing party since it is a non-profit organization incorporated under the laws of the Commonwealth of Puerto Rico, and who certainly does not make any business in the State of Washington D.C.

3. Defendant is a homeowners association, organized under the laws of the Commonwealth of Puerto Rico for the purpose of handling the affairs regarding the community of Dorado Reef. Enclosed please find copy of the Articles of Incorporation and the By-Laws for Dorado Reef.

4. Since 1993, plaintiff's husband Edward S. Irons, who also happens to be the attorney of the case, entered into an agreement with Dorado Reef, S.E., a special partnership and developer, who later handle the administration of the community to the homeowners. By this Agreement plaintiff, her husband Mr. Irons, and their property were to benefit from the covenant and restrictions of the private community and in exchange they were to oblige to comply with payment of maintenance arrears.

5. Due to plaintiff's failure to comply with the obligation, defendants were forced to send bills and a collection letter to Mr. Edward Irons to his address, which is in Washington, D.C.[1] This action cannot constitute "doing business' in Washington, D.C., when a resident of that state is doing business in other place, and the only address he provides is in a different state.

6. Since defendants place of business is in the Commonwealth of Puerto Rico, and the real estate is located Puerto Rico, the agreement was signed in Puerto Rico and the same is governed by local law, this Honorable Court of Washington, D.C cannot acquire jurisdiction over defendant Asociación de Propietarios de La Urbanizaciór Dorado Reef.

7. Defendant Asociación de Propietarios de la Urbanización Dorado Reef is represented by the President of the Board of Directors of the Association, since it has no legal

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[1] This fact is supported by Paragraph number two of the Complaint, where it is stated that "plaintiff, Mary L. Irons and her husband, Edward S. Irons, are citizens of the District of Columbia residing at 3945 52nd Street, N.W., Washington, D.C. 20016."

counselor in the state of Washington D.C., due to the fact that we made no business in said state.

FOR THE REASONS PREVIOUSLY STATED, Defendant respectfully requests that the complaint filed on January 4th, 1999 be dismissed for lack of jurisdiction.

RESPECTFULLY SUBMITTED,

In San Juan, Puerto Rico, this 2nd day of February 1999.

I certify that a true and exact copy of this document has been sent to Edward S. Irons, 700 - 13th Street, N.W., Suite 950, Washington, D.C. 20005.

SWORN STATEMENT

I, Diego Chévere, being duly sworn, declare that the statements included in this document are true in every respect.

/s/ Diego Chevere
DIEGO CHEVERE

Affidavit No. 334

Sworn and subscribed before me by Mr. Diego Chévere, of legal age, married, President of Dorado Reef Homeowners Association, and resident of Dorado, Puerto Rico, whom I identify by his license number issued by the Commonwealth of Puerto Rico.

[SEAL]

In San Juan, Puerto Rico, this 2nd day of February, 1999.

/s/ Martha Lissette Martinez Rodriguez
Notary Public
My Commission does not expire

IN THE SUPERIOR COURT
OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

Civil Action No. 24-99

MARY L. IRONS
3945 - 52nd Street, N. W.
Washington, D. C. 20016

Plaintiff,

v.

ASOCIACION DE PROPIETARIOS DE LA
URBANIZACICN DORADO REEF, INC.
90 Boulevard Miramar
Dorado, Puerto Rico 00646

c/o Mr. Diego Chevere
President And Chairman
Diego Chevere & Co.
First Street, Suite 204
Metro Parque 7
Guaynabo, Puerto Rico 00968

Defendant.

COMPLAINT

I. JURISDICTION AND PARTIES

1. Jurisdiction is conferred by Title 11., D.C. Code, Section 921, as amended.

2. Plaintiff, Mary L. Irons ("Irons") and her husband, Edward S. Irons, are citizens of the District of Columbia residing at 3945 - 52nd Street, N. W., Washington, D. C. 20016.

3. Defendant Asociacion de Propietarios de la Urbanizacion Dorado Reef, Inc. ("Association"), is a corporation of the Commonwealth of Puerto Rico, having a place of business at 90 Boulevard Miramar, Dorado , Puerto Rico 00646.

4. This Court has personal jurisdiction over defendant pursuant to D.C. Code Section 13-423(a) (1) and (b) in that defendant has transacted business in the District of Columbia out of which the causes of action stated herein arose and by which the interests of the District of Columbia have been and are now being adversely affected and by which Irons and her husband have been and are now being damaged.

* * *